DOCKET

SUPREME COURT
OF THE UNITED STATES

No. 10-507
Title: Pacific Operators Offshore, LLP, et al., Petitioners
v.
Luisa L. Valladolid, et al.
Docketed: October 15, 2010
Lower Ct: United States Court of Appeals for the Ninth Circuit
Case Nos.: (08-73862)
Decision Date: May 13, 2010
Rehearing Denied: July 19, 2010
Questions Presented

~~Date~~~	~~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~~
Oct 13 2010	Petition for a writ of certiorari filed. (Response due November 15, 2010)
Nov 9 2010	Order extending time to file response to petition to and including December 15, 2010, for all respondents.
Dec 6 2010	Order further extending time to file response to petition to and including January 14, 2011, for all respondents.
Jan 14 2011	Brief of Federal Respondent in opposition filed.
Jan 14 2011	Brief of respondent Luisa L. Valladolid in opposition filed.
Jan 21 2011	Reply of petitioners Pacific Operators Offshore, LLP, et al. filed.
Jan 26 2011	DISTRIBUTED for Conference of February 18, 2011.
Feb 22 2011	Petition GRANTED.
Mar 17 2011	The time to file the joint appendix and petitioners' brief on the merits is extended to and including May 23, 2011.
Mar 17 2011	The time to file respondent's brief on the merits is extended to and including August 8, 2011.
May 23 2011	Joint appendix filed. (Statement of costs filed)
May 23 2011	Brief of petitioners Pacific Operators Offshore, LLP, et al. filed.
Jul 15 2011	CIRCULATED.
Jul 19 2011	SET FOR ARGUMENT ON Tuesday, October 11, 2011.
Jul 27 2011	The time to file respondents' briefs on the merits is further extended to and including August 31, 2011.
Aug 11 2011	Record received from U.S.C.A. for 9th Circuit. (1 envelope)
Aug 30 2011	Record received from U.S. Department of Labor Benefits Review Board
Aug 31 2011	Brief of respondent Luisa L. Valladolid filed. (Distributed)
Aug 31 2011	Brief of respondent Director, Office of Workers' Compensation Programs filed.

(Distributed)

Sep 7 2011 Motion for divided argument filed by the Solicitor General.

Sep 27 2011 Motion for divided argument filed by the Solicitor General GRANTED.

Sep 30 2011 Reply of petitioners Pacific Operators Offshore, LLP, et al. filed. (Distributed)

Oct 11 2011 Argued. For petitioners: Paul D. Clement, Washington, D. C. For federal respondent: Joseph R. Palmore, Assistant to the Solicitor General, Department of Justice, Washington, D. C. For private respondent: David C. Frederick, Washington, D. C.

PETITION FOR WRIT OF CERTIORARI

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No. _____

In The
Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,

Petitioners,

v.

LUISA L. VALLADOLID,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Outer Continental Shelf Lands Act, 43 U.S.C., §§ 1331-1356 (OCSLA), governs those who work on oil drilling platforms and other fixed structures beyond state maritime boundaries. Workers are eligible for compensation for "any injury occurring as the result of operations conducted on the outer Continental Shelf." 43 U.S.C. § 1333(b) (2006). When an outer continental shelf worker is injured *on land*, is he (or his heir):

(1) *always* eligible for compensation, because his employer's operations on the shelf are the but for cause of his injury (as the Third Circuit holds); or

(2) *never* eligible for compensation, because the Act applies only to injuries occurring on the shelf (as the Fifth Circuit holds);

(3) *sometimes* eligible for compensation, because eligibility for benefits depends on the nature and extent of the factual relationship between the injury and the operations on the shelf (as the Ninth Circuit holds)?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

All parties are listed in the caption.

Petitioner Pacific Operators Offshore, LLP, is a limited liability corporation wholly-owned by AnAmerica Corporation, a successor to AnAmerica & Drilling Company. Petitioner the Insurance Company of the State of Pennsylvania (ICSOP) is a direct, wholly-owned subsidiary of Chartis U.S., Inc. Chartis U.S., Inc., is a wholly-owned subsidiary of Chartis, Inc. Chartis, Inc., is a wholly-owned subsidiary of American International Group, Inc., which is a publically held corporation. With the exception of the AIG Credit Facility Trust (a trust established for the sole benefit of the United States Treasury), no parent corporation or publicly held corporation owns 10 percent or more of the stock of American International Group, Inc.

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PETITION FOR A WRIT OF CERTIORARI

Pacific Operators and ICSOP petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The unpublished decision of the Administrative Law Judge in the Department of Labor's Office of Workers' Compensation Programs is printed in the appendix (App.) at 53a. The unpublished decision of the Benefits Review Board is reprinted in the appendix at App. 35a. The opinion of the Court of Appeals is reported at 604 F.3d 1126 and is reprinted in the appendix at App. 1a. The unpublished order of the Court of Appeals denying rehearing en banc is reprinted in the appendix at App. 94a.

JURISDICTION

The Benefits Review Board had jurisdiction under 33 U.S.C. § 921(b)(3). The Ninth Circuit had jurisdiction to review the decision of the Benefits Review Board under 33 U.S.C. § 921(c). The Ninth Circuit entered judgment on May 13, 2010, App. 1a, and denied petitioners' timely petition for rehearing en banc on July 19, 2010. App. 94a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant portions of 33 U.S.C. § 903 and 43 U.S.C. §§ 1301, 1312, 1331, 1332, and 1333 are reproduced at App. 96a-106a.

INTRODUCTION

The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331-1356, extends the jurisdiction of the United States to the seabed, subsoil, and fixed structures of the outer continental shelf, an area that lies more than three miles offshore and beyond the territorial jurisdiction of the States. The Act governs the rights and obligations of those who own, operate, and work on offshore oil drilling platforms. The Act creates (and Department of Labor regulations implement) an administrative scheme for compensating injured workers that resembles the workers' compensation schemes developed in most States. Under the Act, a worker is eligible for compensation for "any injury occurring as the result of operations conducted on the outer Continental Shelf." 43 U.S.C. § 1333(b).

Three circuit courts have considered whether a worker injured on land is eligible for compensation under the Act. Each circuit has adopted a different test for resolving that question. The Third Circuit has adopted a "status" test: a worker is eligible for benefits no matter where he is injured, so long as he is involved in operations conducted on the outer continental shelf. *See Curtis v. Schlumberger Offshore*

Serv., Inc., 849 F.2d 805 (3d Cir. 1988) (applying the Act to a rig worker killed in a car accident on a New Jersey freeway while traveling to a helicopter that would have taken him to a rig on the shelf). The Fifth Circuit requires a worker to meet both a "status" test and a "situs" test: a worker is eligible for benefits only if his work is related to development on the outer continental shelf and the injury occurs while working on the shelf. Thus, injuries on land are not compensable. *See Mills v. Director, Office of Workers' Comp. Programs, U.S. Dep't of Labor*, 877 F.2d 356 (5th Cir. 1989) (refusing to apply the Act to a welder injured on land while constructing an offshore oil platform). And the Ninth Circuit (in the case below) has adopted a separate and fact-specific test: a worker injured on land is eligible for benefits if there is "a substantial nexus between the injury and extractive operations on the shelf," meaning that "the work performed directly furthers outer continental shelf operations and is in the regular course of such operations." *Valladolid v. Pac. Operations Offshore, LLP*, 604 F.3d 1126, 1139 (9th Cir. 2010), App. 28a.

This disputed legal issue – the proper test of eligibility for OCSLA benefits – is one of nationwide importance because the three circuit courts that have divided on this question cover a majority of the Nation's coastline and offshore drilling operations. There is no reason to believe that this circuit split will resolve itself. The Third and Fifth Circuits have both followed their standards for more than two decades. Because each of the three circuits has adopted a

fundamentally different test, the split will not be resolved even if one of the circuits were to alter its standard through the en banc process. In sum, a writ of certiorari should be granted here because a worker's eligibility for OCSLA benefits should not depend on the circuit in which his injury occurs.

STATEMENT OF THE CASE

The Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. §§ 901-950, provides benefits to employees engaged in maritime employment who are injured upon navigable waters, including adjoining piers, wharfs, and other structures customarily used in loading, unloading, repairing or building vessels. 33 U.S.C. § 903(a) (2006). Section 4 of OCSLA extends LHWCA benefits to cover the disability or death of non-maritime employees "resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf." 43 U.S.C. § 1333(b). The outer continental shelf is comprised of "all submerged lands lying seaward and outside of the area of lands beneath navigable waters," that is, submerged lands lying outside the territorial jurisdiction of the states, which generally extends three miles from the coast line. 43 U.S.C. §§ 1301(a)(2), 1312, 1331(a) (2006).

Respondent Luisa Valladolid, the widow of decedent Juan Valladolid, brought this proceeding against Pacific Operators and ICSOP for workers' compensation benefits under the LHWCA and the OCSLA. Pacific's primary business involves oil exploration and extraction. The decedent worked for Pacific as a roustabout, stationed primarily on one of Pacific's two drilling platforms located on the outer continental shelf off the coast of California. He spent approximately 98 percent of his working time on one of the drilling platforms, primarily performing maintenance and repair duties. He also spent time working at Pacific's onshore oil flocculation facility. The facility is separated from the Pacific Ocean by railroad tracks, a highway, and a beach. The facility received crude oil slurry from the offshore platforms via pipeline. Pacific processed the slurry, separating its oil, gas, water, and solid constituents, then routed the oil and gas through pipelines to third parties. The decedent performed maintenance duties at the facility, including painting, sandblasting, weed-pulling, cleaning drain-culverts, and operating a forklift.

Pacific's employees traveled to and from the offshore platforms on a crew boat departing from a pier located approximately three miles from the oil flocculation facility. The boat was also used to ferry equipment and supplies, and to remove scrap metal from the platforms. The scrap metal was ferried to the pier, where it was loaded into trucks and driven to the facility. There it was dumped at various spots on the property. One of the decedent's duties at the

onshore facility was to use a forklift to retrieve the scattered scrap metal and transport it to a central location so that third-party scrap metal vendors could pick the metal up and haul it away. He performed this process roughly once every two years.

Between May 5, 2004 and June 5, 2004, Pacific assigned decedent to work at the onshore facility assisting in an ongoing project painting a water tank. He performed that work most of the day on June 2, 2004. At 4:00 p.m. that day, the decedent's supervisor directed him to take a forklift to the rear yard of the facility and move some scrap metal. One hour and 15 minutes later, the supervisor found the decedent next to a tree roughly 10 feet from a service road in the facility, with the forklift resting on his abdomen and chest. He was pronounced dead at the scene. The decedent had not moved any of the scrap metal he had been directed to move.

The accident report stated that the decedent apparently had stood on the top of one of the raised tines of the forklift to cut fruit hanging from a tree that was out of reach of a person on the ground. The forklift apparently moved forward while the decedent was attempting to harvest the fruit, which caused him to lose his balance, fall in front of the forklift, and sustain fatal injuries when it rolled over him.

Respondent received death benefits under California's workers' compensation scheme. She also filed a claim for benefits under the LHWCA and under OCSLA's extension to outer continental shelf workers.

An administrative law judge in the Department of Labor's Office of Workers' Compensation Programs denied respondent's OCSLA claim on the ground the death had not occurred on the outer continental shelf, and denied the LHWCA claim on the grounds the decedent was not engaged in maritime employment and was not injured on a maritime situs. App. 81a, 93a. The Benefits Review Board upheld the administrative law judge's decision. App. 42a-43a, 51a-52a.

On respondent's petition for review, the United States Court of Appeals for the Ninth Circuit upheld the Board's finding that the facility was not a maritime situs, meaning she had no direct right to LHWCA benefits. *Valladolid v. Pac. Operations Offshore LLP*, 604 F.3d 1126, 1141 (9th Cir. 2010), App. 32a. However, the court rejected the Board's situs-of-injury test for determining the applicability of OCSLA's extension of the LHWCA. *Id.* at 1137-38, App. 23a-24a. The Ninth Circuit formulated a new and different test: "An injury is 'the result of' outer continental shelf operations if there is a substantial nexus between the injury and the operations." *Id.* at 1142, App. 34a. "To meet the standard, the claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations." *Id.* at 1139, App. 28a. The Ninth Circuit remanded for further agency proceedings involving the new test. *Id.* at 1142, App. 34a.

REASONS FOR GRANTING THE WRIT

I. THE NINTH CIRCUIT'S DECISION CREATES A THREE-WAY CIRCUIT SPLIT ON THE IMPORTANT QUESTION OF OIL PLATFORM WORKERS' ELIGIBILITY FOR OCSLA BENEFITS.

Three Courts of Appeals have considered whether a worker injured on land is eligible for LHWCA benefits, as extended by section 4 of OCSLA, 43 U.S.C. § 1333(b). One court adopted a status test – the employee's work must further mineral extraction from the outer continental shelf. Another court required an employee to satisfy both a status and a situs test – the employee's work must be related to development on the outer continental shelf and he must have suffered injury or death from an occurrence on the shelf. And a third court rejected both the status and situs tests in favor of a fact-intensive inquiry into the nature and extent of the employee's work.

In *Curtis v. Schlumberger Offshore Ser., Inc.*, 849 F.2d 805, 809 (3d Cir. 1988) (citation omitted), the Third Circuit adopted the status test. It held that an oil rig worker injured in a car accident on a New Jersey freeway while traveling to a helicopter that would have taken him to an offshore rig was entitled to LHWCA benefits. As interpreted by the Third Circuit, "[t]he only criterion [under OCSLA] . . . for securing LHWCA benefits is for injured employees to be involved in 'any operations conducted on the outer Continental Shelf for the purpose of exploring for,

[and] developing . . . the natural resources . . . of the outer Continental Shelf.' There [is] . . . no limitation . . . to 'artificial islands and fixed structures'. . . .": *Id.* at 810 n.9 ("[s]itus does not control the application of the LHWCA"). Thus, the Third Circuit has adopted a "but for" test: the employee's injury on the freeway occurred as a result of operations on the outer continental shelf because "'[b]ut for' his traveling to the [offshore rig] for the purpose of conducting 'operations' within § 1333(b), [he] would not have sustained injuries in the automobile accident." *Id.* at 811.

The Fifth Circuit took a different approach in *Mills v. Dir., Office of Workers' Comp. Programs, U.S. Dep't of Labor*, 877 F.2d 356 (5th Cir. 1989), holding that an employee must satisfy both a status and a situs test to be eligible for benefits under the LHWCA as extended by OCSLA: "We interpret § 1333(b) to require that covered operations be (1) related to OCS development; and (2) conducted on the OCS. Given the second requirement, activity conducted off the OCS, even though related to OCS mineral extraction, does not satisfy § 1333(b)." *Id.* at 359. Accordingly, the Fifth Circuit in *Mills* held that a welder injured during the onshore construction of a platform designed for the outer continental shelf was not eligible for LHWCA benefits.

In this case, the Ninth Circuit disagreed with both the Third and Fifth Circuits. Rejecting the Fifth Circuit's holding in *Mills*, it held that "a situs-of-injury test is unambiguously absent from § 1333(b)." *Valladolid*, 604 F.3d at 1135, App. 19a. However,

refusing to follow the Third Circuit, the Ninth Circuit did not "find that Congress intended to enact a simple 'but for' test in covering injuries that occur 'as the result of' outer continental shelf operations. Injuries with a tenuous connection to the outer continental shelf are not covered." *Id.* at 1139, App. 27a.

Instead, the Ninth Circuit adopted the following test:

> [T]he claimant must establish a substantial nexus between the injury and extractive operations on the shelf. To meet the standard, the claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations. An injury sustained during employment on the outer continental shelf itself would, by definition, meet the standard. However, an accountant's workplace injury would not be covered even if related to outer continental shelf operations, while a roustabout's injury in a helicopter en route to the outer continental shelf likely would be. We leave more precise line-drawing to the specific factual circumstances of later cases.

Id., App. 28a.

Although the facts in this case are undisputed (the decedent suffered fatal injuries while attempting to harvest fruit at Pacific's onshore facility), the Ninth Circuit declined to decide whether they satisfied its "substantial nexus" test. Instead, it remanded

the case for further consideration by the agency. *Id.* at 1142, App. 34a.

These three circuit courts are hopelessly divided, and their territories include a majority of the Nation's coastline, giving rise to the vast majority of OCSLA claims. The purely legal question of whether outer continental shelf workers injured on land are eligible for OCSLA benefits therefore deserves this Court's review.

II. THE NINTH CIRCUIT'S INTERPRETATION OF OCSLA IS INCONSISTENT WITH CONGRESSIONAL PURPOSE AND THIS COURT'S STATEMENTS.

The Ninth Circuit's decision in this case disregarded Congress' purpose in enacting OCSLA. Before the enactment of OCSLA in 1953, the outer continental shelf was "an area of intense activity that lacked an established legal system because it lies beyond state boundaries." *Mills*, 877 F.2d at 358. Consequently, "to define a body of law applicable to the seabed, the subsoil, and the fixed structures . . . on the outer Continental Shelf," *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 355 (1969), Congress extended "[t]he Constitution and laws and civil and political jurisdiction of the United States" to those locales "to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a state. . . ." 43 U.S.C. § 1333(a)(1) (2006). In the event no federal law existed on a

particular issue, Congress borrowed the adjacent state's law as surrogate federal law. 43 U.S.C. § 1333(a)(2)(A) (2006).

"One obvious void in the law governing the OCS was the lack of a workers' compensation scheme for thousands of workers employed in the dangerous oilfield extraction industry. Congress filled that void in § 1333(b) when it adopted the LHWCA's benefits provision to cover non-seamen employed in the oil patch on the OCS." *Mills*, 877 F.2d at 358.

No such void existed when outer continental shelf workers were injured on land. Like the decedent in this case, those workers were covered by the applicable state workers' compensation scheme. As the Fifth Circuit in *Mills* correctly observed, "Congress intended to regulate the OCS, not those areas that already were governed by state law." *Id.* at 359. There was no "legislative history suggesting that Congress intended to single out OCSLA's workers' compensation scheme for different treatment." *Id.* The Ninth Circuit's decision anticipates that some outer continental shelf workers injured on land will be eligible for OCSLA benefits (and even some workers who never set foot on the outer continental shelf, so long as their work "directly furthers outer continental shelf development"), and to that extent the decision runs afoul of Congress' intentions.

The Ninth Circuit's decision also has important insurance consequences that are inconsistent with Congress' intentions. If, as the Ninth Circuit held

here, workers injured on land are entitled to both state workers' compensation benefits and OCSLA benefits so long as their work "directly furthers outer continental shelf operations," *Valladolid*, 604 F.3d at 1139, App. 28a, then employers must purchase insurance covering their liability to land based workers (like the welder in *Mills*) under both the state and federal compensation acts. As the Fifth Circuit explained, however, there is "no evidence indicating that Congress intended to create such a cumbersome and uncertain compensation scheme or that it intended to intrude in a significant way on established state workers' compensation programs." *Mills*, 877 F.2d at 362.

The Ninth Circuit believed its decision was compelled by what it characterized as OCSLA's plain language, asserting that "a situs-of-injury test is unambiguously absent from § 1333(b)." *Valladolid*, 604 F.3d at 1135, App. 19a. The language of § 1333(b) is anything but plain, however. Interpreting the same language, the Fifth Circuit showed that eligibility for benefits rests on an injury occurring on the shelf: although the phrase "'[injured] as the result of *operations* conducted on the outer Continental Shelf for the purpose of . . . developing . . . the natural resources . . . of the [OCS]' [in §1333(b)] is open to interpretation," given the congressional purpose underlying OCSLA, "under [a] . . . plausible reading of 43 U.S.C. § 1333(b), coverage requires that the relevant 'operations' out of which the injury arises occur on the OCS." *Mills*, 877 F.2d at 359.

Moreover, even if the Ninth Circuit's interpretation of 43 U.S.C. § 1333(b) were correct, there was no reason for it to infer meaning from the absence of a situs requirement. As two decisions of this Court confirm, a situs requirement already appears in § 1333(a), which limits OCSLA's coverage "to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed. . . ."; it was unnecessary for Congress to repeat that requirement in 43 U.S.C. § 1333(b).

In one of those decisions, *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986), two offshore drilling platform workers were killed when the helicopter carrying them from the platform to the shore crashed 30 miles off the Louisiana coast. Their widows brought actions against the owner and operator of the helicopter. They claimed they were not limited to awards of pecuniary damages provided by the Death on the High Seas Act, 46 U.S.C. §§ 30301-30308, but were also entitled to nonpecuniary damages under the Louisiana wrongful death statute, which applied either of its own force, or as surrogate federal law under OCSLA. *See* 43 U.S.C. § 1333(a)(2)(A) (2006). This Court held that because the helicopter crash did not occur in the area covered by OCSLA, but rather on the high seas, the maritime remedy for wrongful death under the Death on the High Seas Act controlled:

> We do not interpret § 4 of OCSLA, 43 U.S.C., § 1333 to require or permit us to extend the

> coverage of the statute to the platform workers in this case who were killed miles away from the platform and on the high seas simply because they were platform workers. Congress determined that the general scope of OCSLA's coverage, like the operation of DOHSA's remedies, would be determined principally by locale, not by the status of the individual injured or killed. Because the fatalities underlying this suit did not arise from an accident in the area covered by OCSLA but rather occurred on the high seas, DOHSA plainly was intended to control.

477 U.S. at 219-20.

In a footnote, this Court in *Offshore Logistics* added:

> Only one provision of OCSLA superimposes a status requirement on the otherwise determinative OCSLA situs requirement; § 1333(b) makes compensation for the death or injury of an "employee" resulting from certain operations on the Outer Continental Shelf payable under the Longshoreman's and Harbor Workers' Compensation Act. We note that because this case does not involve a suit by an injured employee against his employer pursuant to § 1333(b), this provision has no bearing on this case.

477 U.S. at 220 n.2.

In *Offshore Logistics*, this Court referred to its discussion in *Herb's Welding, Inc. v. Gray*, 470 U.S.

414 (1985), regarding the "status and situs requirements of the Longshoremen's and Harbor Workers' Compensation Act as applied to platform workers making claims against their employers. . . ." *Offshore Logistics*, 477 U.S. at 220. In *Herb's Welding*, a welder who spent roughly three-fourths of his working time on oil drilling platforms in state waters and the rest on platforms on the outer continental shelf claimed a direct right to LHWCA benefits after he was injured on a platform in state waters. This Court held that he did not have a direct right to LHWCA benefits because he was not engaged in maritime employment. It declined to decide whether the welder was entitled to benefits under OCSLA because the issue had not been fully briefed in or discussed by the Court of Appeals. *Herb's Welding*, 470 U.S. at 426 n.12, & 427. Nonetheless, the Court made clear that entitlement to benefits under that Act depended on situs as well as status. Noting "the explicit geographical limitation to the Lands Act's incorporation of the LHWCA," it commented that "Gray would indeed have been covered for a significant portion of his work-time, but because of the Lands Act, not because he fell within the terms of the LHWCA. . . . [T]hat statute draws a clear geographical boundary that will predictably result in workers moving in and out of coverage." *Id.* at 427.

The Ninth Circuit here dismissed this Court's statements in *Offshore Logistics* and *Herb's Welding* as dicta. *Valladolid*, 604 F.3d at 1131-32 & n.2, App. 9a-11a & n.2. But as the Fifth Circuit in *Mills*

correctly found, those statements firmly acknowledge "the geographic boundaries to OCSLA's coverage. . . ." *Mills*, 877 F.2d at 361. They make clear that when a worker seeks benefits under OCSLA, § 1333(b) does not replace the Act's situs requirement with a status requirement. Rather, it "superimposes," i.e., adds, a status requirement to "the otherwise determinative OCSLA situs requirement" found in § 1333(a). *Offshore Logistics*, 477 U.S. at 220 n.2. Consequently, a worker will "mov[e] in and out of coverage," *Herb's Welding*, 470 U.S. at 427, depending on where he is working. As the Fifth Circuit stated in *Mills*, "[w]e cannot accept the Director's explanation that the Court meant to 'replace' situs with status when it used 'superimposes.' The Court could not have made it clearer that a worker must demonstrate status and situs to recover LHWCA benefits under § 1333(b)." *Mills*, 877 F.2d at 361.

In sum, the Ninth Circuit's justifications for its decision can be reconciled with neither Congressional intent nor this Court's statements in prior cases involving the OCSLA. And as we have explained, the Ninth Circuit's decision deepens an existing circuit split on a threshold issue of benefits eligibility and formulates a test that provides no meaningful guidance to administrative law judges and the Benefits Review Board. The current three-way split among the circuits regarding the interpretation of 43 U.S.C. § 1333(b) and the import of this Court's statements in *Offshore Logistics* and *Herb's Welding* means that a worker's entitlement to OCSLA benefits for an injury

on land depends on the circuit in which the claim arises, an intolerable situation. Only a decision by this Court can bring clarity and consistency to this area of the law.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LUISA VALLADOLID,

Petitioner,

v.

PACIFIC OPERATIONS OFFSHORE, LLP; INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA; and DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,

Respondents.

No. 08-73862

BRB No. 07-965

OPINION

On Petition for Review of an Order of the Benefits Review Board

Argued and Submitted
March 9, 2010 – San Francisco, California

Filed May 13, 2010

Before: Stephen Reinhardt and Jay S. Bybee, Circuit Judges, and James V. Selna,* District Judge.

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* The Honorable James V. Selna, United States District Judge for the Central District of California, sitting by designation.

COUNSEL

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Michael W. Thomas, Laughlin, Falbo, Levy & Moresi LLP, San Francisco, California, for the respondents.

OPINION

SELNA, District Judge:

In this case, we consider whether an employee must be injured on the outer continental shelf to be eligible for workers' compensation benefits under the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1331 *et seq.* The two other circuits that have considered this question have reached conflicting conclusions.

I.

Decedent Juan Valladolid worked for Pacific Operations Offshore as a roustabout, stationed primarily on one of Pacific Operations's two offshore drilling platforms. He was killed, however, on the grounds of Pacific Operations's onshore oil-processing facility when he was crushed by a forklift. His widow seeks workers' compensation benefits under OCSLA and the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 901 *et seq.*

Pacific Operations runs two offshore oil drilling platforms, the Hogan and the Houchin, both located more than three miles off the coast of California. Valladolid spent roughly 98% of his working time aboard the Hogan. As a roustabout, his work primarily consisted of cleaning and maintenance duties: picking up litter, emptying trash cans, washing decks, painting, fixing equipment, and helping load and unload the platform crane.

Valladolid also spent time working at Pacific Operations's onshore oil flocculation facility, located on the California coast just 250-300 feet from the shore.[1] This facility, referred to as La Conchita, received crude oil slurry from the Hogan and the Houchin via pipeline. The slurry would then be processed, separating its oil, gas, water, and solid constituents, with the oil and gas routed off site through pipelines to third parties. Valladolid performed maintenance duties at La Conchita, including painting, sandblasting, weed-pulling, cleaning drainculverts, and operating a forklift.

Crew members traveled to and from the offshore platforms on a crew boat departing from the Casitas Pass Pier, located about three miles from La Conchita. The crew boat was also used to ferry

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[1] Pacific contends that the facility is actually 250-300 *yards* from the ocean. Because our decision does not turn on the difference between 250-300 feet and 250-300 yards, we assume for the purposes of this appeal that Petitioner's measure is correct.

equipment and supplies and to remove scrap metal – pieces of old pipe, storage tanks, catwalks, chain, and cables – from the platforms. The scrap metal was ferried to the Casitas Pass Pier, where it was loaded into trucks and driven to La Conchita. There it was dumped at various spots on the property. Neither the loading crew at the pier nor the truck drivers were employed by Pacific Operations.

One of Valladolid's duties at La Conchita was to "centralize" the scrap metal from the various locations so that third-party scrap metal vendors could pick the metal up and haul it away. Valladolid would use a forklift to retrieve the scattered metal and transport it to a central location. The consolidation process was performed roughly once every two years. Valladolid was killed during this process when he was crushed by a forklift.

Petitioner, Valladolid's widow, received death benefits under California's workers' compensation scheme. She also filed a claim for benefits under the LHWCA, both directly under the LHWCA and via the OCSLA extension to outer continental shelf workers. After informal proceedings before the local district director of the Department of Labor's Office of Workers' Compensation Programs, the matter was referred to an Administrative Law Judge ("ALJ").

The ALJ denied Petitioner's OCSLA claim on the grounds that Valladolid's injury had occurred outside the geographic situs of the outer continental shelf. The ALJ denied the LHWCA claim on two grounds:

(1) Valladolid was not engaged in maritime employment, and (2) he was not injured on a maritime situs. The Benefits Review Board ("BRB") upheld the ALJ's denial of the OCSLA benefits under the "situs-of-injury" test, and affirmed the denial of LHWCA benefits on the maritime situs ground. The BRB did not reach the maritime employment issue.

II.

We have jurisdiction to review the final orders of the BRB under 33 U.S.C. § 921(c). We review the BRB's decisions for errors of law and adherence to the substantial evidence standard. *Pedroza v. BRB,* 583 F.3d 1139, 1143 (9th Cir. 2009). The BRB's decisions on questions of law are reviewed de novo. *M. Cutter Co. v. Carroll,* 458 F.3d 991, 993 (9th Cir. 2006). Because the BRB is not a policymaking body, its constructions of the LHWCA are not entitled to special deference. *Dyer v. Cenex Harvest States Coop.*, 563 F.3d 1044, 1047 (9th Cir. 2009). However, the Court must "respect the [BRB's] interpretation of the statute where such interpretation is reasonable and reflects the policy underlying the statute." *Christensen v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1052 (9th Cir. 2009) (quoting *McDonald v. Dir., Office of Workers' Comp. Programs,* 897 F.2d 1510, 1512 (9th Cir. 1990)).

III.

The LHWCA provides compensation for the disability or death of a maritime employee "if the disability or death results from an injury occurring upon the navigable waters of the United States." 33 U.S.C. § 903(a). Under the OCSLA workers' compensation provision, LHWCA benefits are extended to:

> [the] disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf.

43 U.S.C. § 1333(b). The outer continental shelf is comprised of "all submerged lands lying seaward and outside of the area of lands beneath navigable waters" – that is, submerged lands lying outside the territorial jurisdiction of the states. *Id.* § 1331(a); *see id.* § 1301(a)(2). State jurisdiction over offshore lands generally extends three miles from the coast line, though in certain cases not relevant here, it may extend further. *See id.* § 1301(a)(2).

Petitioner contends that the BRB impermissibly applied a "situs-of-injury" requirement for OCSLA workers' compensation, denying her claim because her husband was killed on shore and not on the outer continental shelf. This is an issue of first impression in the Ninth Circuit. Two other circuits presented

with this exact issue have reached conflicting conclusions.

In *Curtis v. Schlumberger Offshore Service, Inc.*, 849 F.2d 805 (3d Cir. 1988), the Third Circuit rejected the situs-of-injury test and held that a claimant need only satisfy a "but for" test in establishing that the injury occurred "as the result of" operations on the outer continental shelf. *Id.* at 809-11. Accordingly, an employee injured in a car accident on his way to meet a helicopter that would take him to an offshore platform was eligible for OCSLA disability benefits. *Id.* at 806, 811.

However, in *Mills v. Director, Office of Workers' Compensation Programs,* 877 F.2d 356 (5th Cir. 1989) (en banc), the Fifth Circuit adopted a situs-of-injury requirement for OCSLA claims. Under *Mills,* an OCSLA claimant must show that the injury occurred on an outer continental shelf platform or on the waters above the outer continental shelf, in addition to satisfying the "but for" test. *Id.* at 362; *see also Becker v. Tidewater, Inc.,* 586 F.3d 358, 366-67 (5th Cir. 2009); *Pickett v. Petroleum Helicopters, Inc.,* 266 F.3d 366, 368 (5th Cir. 2001); *Sisson v. Davis & Sons, Inc.,* 131 F.3d 555, 558 (5th Cir. 1998). Thus, a welder injured during the onshore construction of a platform destined for the outer continental shelf was not eligible for OCSLA disability benefits. *Mills,* 877 F.2d at 357, 362.

A.

Aside from the two conflicting Court of Appeals decisions, there is little precedent on the question before us. The Supreme Court touched on the question in passing in *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986). The relevant issue there was whether a choice-of-law provision in OCSLA, 43 U.S.C. § 1333(a)(2)(A), applied so as to allow the widows of employees killed in a helicopter crash to pursue a wrongful death action under state law. *Id.* at 209. Section 1333(a)(2)(A) applies the law of the nearest state as surrogate federal law for "the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon." 43 U.S.C. § 1333(a)(2)(A). The Court declined to extend this provision to an accident occurring on the waters above the outer continental shelf, finding that "Congress determined that the general scope of OCSLA's coverage . . . would be determined principally by locale, not by the status of the individual injured or killed." *Tallentire*, 477 U.S. at 219. In an accompanying footnote, the Court added:

> Only one provision of OCSLA superimposes a status requirement on the otherwise determinative OCSLA situs requirement; § 1333(b) makes compensation for the death or injury of an "employee" resulting from certain operations on the Outer Continental Shelf payable under the Longshoremen's and Harbor Workers' Compensation Act. We note that because this case does not involve a suit by an injured employee against his employer

> pursuant to § 1333(b), this provision has no bearing on this case.

Id. at 219 n.2.

Pacific Operations contends that this footnote is dispositive of this case. We, on the other hand, agree with the Third Circuit that *Tallentire* is simply not on point. *See Curtis,* 849 F.2d at 810. *Tallentire* dealt with the applicability of the § 1333(a)(2)(A) choice-of-law provision, not the § 1333(b) benefits provision, as explicitly noted by the Court. 477 U.S. at 219 n.2 ("[Section 1333(b)] has no bearing on this case"). The Court's footnote about § 1333(b) is textbook dictum.

Of course, we treat the considered dicta of the Supreme Court with greater weight and deference "as prophecy of what that Court might hold." *United States v. Montero-Camargo,* 208 F.3d 1122, 1132 n.17 (9th Cir. 2000) (en banc) (quoting *Zal v. Steppe,* 968 F.2d 924, 935 (9th Cir. 1992) (Noonan, J., concurring and dissenting)). They are not to be "blandly shrug[ged] . . . off because they were not a holding." *Zal,* 968 F.2d at 935 (Noonan, J., concurring and dissenting). We do not blindly, however, follow an unconsidered statement simply because it was uttered by the Supreme Court. *See Montero-Camargo,* 208 F.3d at 1132 n.17. As the Court itself has noted, "general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. . . . [T]heir possible bearing on all other cases is seldom completely investigated." *Humphrey's Executor v. United States,* 295 U.S. 602,

627 (1935) (quoting *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399-400 (1821)).

For the following reasons, we are convinced that the footnote in *Tallentire* is of the unconsidered variety not entitled to special deference. The § 1333(b) benefits issue was not before the Court, was not briefed by the parties, and had no relevance to the case before it. *See Tallentire*, 477 U.S. at 219 & n.2. There is no analysis or reasoning behind the Court's statement that a situs requirement applies to § 1333(b). *See id.* These circumstances strip the dictum of any predictive or persuasive value. *See District of Columbia v. Heller*, 128 S. Ct. 2783, 2816 n.25 (2008).

Moreover, the import of the Court's statement to the case at hand is debatable. The Court spoke generally of an OCSLA "situs" requirement, but it is not clear that the Court's statement requires a "situs-of-injury," as opposed to a "situs-of-operations," test. Section 1333(b) applies only to injuries occurring "as the result of operations conducted on the outer Continental Shelf." 43 U.S.C. § 1333(b). Clearly, the *operations* must be on the outer continental shelf. *See Herb's Welding v. Gray* (*Herb's Welding II*), 766 F.2d 898, 900 (5th Cir. 1985) (holding that an injury occurring on an oil platform in state waters is not eligible for OCSLA benefits). It is less clear – and the *Tallentire* footnote does not illuminate the issue –

that the *injury* must also be on the outer continental shelf.[2]

The Ninth Circuit cases cited by the parties are similarly unhelpful. In *Kaiser Steel Corp. v. Director, Office of Workers' Compensation Programs*, 812 F.2d 518 (9th Cir. 1986), a pipefitter/welder was injured while working on an outer continental shelf platform and sought benefits under OCSLA. *Id.* at 520. The issue was whether he was an eligible "employee" even though his work was "primarily land based." *Id.* at 521-22. This Court, finding him eligible for § 1333(b) benefits, stated that:

> [i]n the absence of any other limitation on the face of the statute or in the legislative history of [OCSLA], section 1333(b) should

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[2] The *Mills* court also found support for its situs-of-injury test in *Herb's Welding, Inc. v. Gray* (*Herb's Welding I*), 470 U.S. 414 (1985). *Mills*, 877 F.2d at 361. The issue in *Herb's Welding I* was whether a worker on a platform in state waters was engaged in "maritime employment" so as to entitle him to benefits under the LHWCA. 470 U.S. at 415-16. The Fifth Circuit found significance in the Court's passing comment that "the inconsistent coverage here results primarily from the explicit geographic limitation to [OCSLA's] incorporation of the LHWCA. . . . [T]hat statute draws a clear geographic boundary that will predictably result in workers moving in and out of coverage." *Id.* at 427. As with *Tallentire*, however, the scope of § 1333(b) was never considered, rendering this passage unhelpful on the issue before us. In fact, the Court explicitly declined to consider whether the worker was entitled to OCSLA benefits even though he had argued the issue throughout the proceedings. *Id.* at 426 n.12.

> be construed as extending [LHWCA] coverage to all victims of disabling or fatal injuries sustained while working to develop the mineral wealth of the OCS [outer continental shelf].

Id. at 522. This passage does not directly apply to the situs issue, as it came within the context of whether the claimant met the § 1333(b) "employee" requirement. *Id.* at 522-23.

In *A-Z International v. Phillips*, 179 F.3d 1187 (9th Cir. 1999), this Court reviewed a BRB decision vacating an ALJ's order recommending sanctions for a fraudulent OCSLA claim. *Id.* at 1189. In the underlying case, the ALJ had found the claimant ineligible for OCSLA benefits because, contrary to his allegation, his injury did not occur on an offshore platform and he therefore failed to satisfy the situs-of-injury test. *Id.* That decision was never appealed. *Id.* However, on review of the subsequent sanctions order, this Court stated in a footnote accompanying the recitation of the facts:

> The situs requirement is a predicate for coverage under OCSLA. *See* 43 U.S.C. § 1333 (1994); *see also Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 219 (1986) (noting that "Congress determined that the general scope of OCSLA's coverage . . . would be determined principally by locale").

Id. at 1189 n.1. We do not find this statement binding or especially persuasive, given that the situs issue was neither argued by the parties nor considered by

the Court because the claimant never appealed the decision on the situs question. *Id.* at 1189. The issue in *A-Z International* was a procedural question about an ALJ's contempt power. *Id.* The comment on the situs issue was gratuitous language appended to the statement of facts and not a considered statement of the law.

B.

Absent clear precedent to guide us on the situs-of-injury issue, we are presented with a straightforward question of statutory construction. "The purpose of statutory construction is to discern the intent of Congress in enacting a particular statute." *Robinson v. United States,* 586 F.3d 683, 686 (9th Cir. 2009) (quoting *United States v. Daas,* 198 F.3d 1167, 1174 (9th Cir. 1999)). We first look to the plain language of the statute, which controls "unless its application leads to unreasonable or impracticable results." *Id.* at 687 (quoting *Daas,* 198 F.3d at 1174). The plain meaning is determined with an eye towards the context of the language and design of the statute as a whole. *Id.* "It is a cardinal canon of statutory construction that statutes should be interpreted harmoniously with their dominant legislative purpose." *United States v. Gallenardo,* 579 F.3d 1076, 1085 (9th Cir. 2009) (quoting *United States v. Nader,* 542 F.3d 713, 720 (9th Cir. 2008)).

There are two distinct arguments that OCSLA's language supports a situs-of-injury requirement. The

first argument – the route taken by the Fifth Circuit in *Mills* – is that § 1333(b) itself contains the situs-of-injury requirement. *See* 877 F.2d at 358-59. The second argument – advanced by Pacific Operations – is that the situs requirement of § 1333(a) applies to OCSLA as a whole. For the reasons discussed below, we find neither argument persuasive and find the statute unambiguous in not requiring a situs-of-injury test.

OCSLA was enacted in 1953 to establish federal jurisdiction over the submerged lands beyond the jurisdiction of the states in order to promote the orderly exploitation of minerals lying below the seabed. *See Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 355-56 (1969); Outer Continental Shelf Lands Act, Pub. L. No. 83-212, 67 Stat. 462, 462 (1953); S. Rep. No. 83-411, at 2 (1953). As part of this endeavor, Congress needed to establish a body of substantive law to cover the outer continental shelf. *See Rodrigue*, 395 U.S. at 355-56; S. Rep. No. 83-411, at 2. Section 4 of OCSLA, codified at 43 U.S.C. § 1333, set forth the laws to be applied. § 4, 67 Stat. at 462-63. For example, subsection (a) establishes the substantive civil and criminal law applying to the outer continental shelf, artificial islands, and platforms fixed to the seabed. 43 U.S.C. § 1333(a). Subsection (c) applies the National Labor Relations Act ("NLRA") to "any unfair labor practice . . . occurring upon any artificial island, installation, or other device referred to in subsection (a)." *Id.* § 1333(c). Subsection (d) provides the Coast Guard with the authority to

promulgate regulations governing the safety equipment, warning devices, and other safety matters on artificial islands and fixed platforms. *Id.* § 1333(d). Subsection (e) extends the Army's authority to prevent obstruction of the navigable waters to fixed platforms on the outer continental shelf. *Id.* § 1333(e).

Section 1333(b) provides workers' compensation benefits for "any injury occurring *as the result of* operations conducted on the outer Continental Shelf." *Id.* § 1333(b) (emphasis added). The situs-of-operations requirement is clear; the *operations* must be conducted on the outer continental shelf. However, the only limitation on the *injury* is that it be "the result of" operations on the outer continental shelf. As many courts have recognized, the phrase "as the result of" simply denotes causation. *See, e.g., Brown v. Gardner,* 513 U.S. 115, 119 (1994) ("as a result of" in veterans' benefits statute indicates causation with no fault requirement); *Murakami v. United States,* 398 F.3d 1342, 1351-52 (Fed. Cir. 2005) ("as a result of" in federal claims statute indicates causation with no temporal limitation); *Black Hills Aviation, Inc. v. United States,* 34 F.3d 968, 975 (10th Cir. 1994) ("as a result of" in Department of Defense regulation means "caused by" rather than "connected with"). Thus, the most natural reading of § 1333(b) provides coverage for any injury *caused by* outer continental shelf operations regardless of where the injury occurred.

The *Mills* court found ambiguity in § 1333(b) by focusing on the word "operations." According to *Mills,*

because the *operations* must occur on the outer continental shelf, the *injury* must also occur on the outer continental shelf: "activity conducted off the OCS, even though related to OCS mineral extraction, does not satisfy § 1333(b)." 877 F.2d at 359. However, this interpretation fails to acknowledge the connecting phrase "as the result of." The results of an operation may regularly extend beyond its immediate physical location. When a pitcher hits a batter with a pitch, the batter's injury is the result of "operations" on the mound. The Fifth Circuit's attempt to unearth ambiguity in § 1333(b) by ignoring a key phrase does not persuade us.[3]

Neither are we persuaded that the situs limitations in the other provisions of § 1333 indicate a

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[3] Our position finds support in *Murakami*, a Federal Circuit decision interpreting similar language in a reparations statute. *Murakami* involved a claim under the Civil Liberties Act of 1988, which provided a redress payment for individuals who were "deprived of liberty or property *as a result of*" the internment of Japanese-Americans during World War II. 398 F.3d at 1344 (emphasis added); 50 U.S.C. app. § 1989b-7(2). The claimant challenged a regulation categorically denying payments to individuals born after the restraints on travel were lifted. *Murakami*, 398 F.3d at 1347-48. The Federal Circuit rejected this categorical exclusion, noting that the result of the travel restrictions could, in certain cases, extend beyond the date of their repeal. *Id.* at 1352-53. *Murakami* teaches that "as a result of" contains no temporal limitation; likewise, in this case, we see no reason to import a spatial one. If travel restrictions can cause an injury after their repeal, similar logic supports the view that operations on the outer continental shelf can cause injury outside the outer continental shelf.

situs-of-injury requirement for subsection (b). The *Mills* majority felt that these limitations reflected a Congressional intent to limit the reach of the statute to occurrences on the outer continental shelf as part of a "gap-filling" purpose. 877 F.2d at 359-60. We, however, find the *Mills* dissent to be more persuasive: the absence of a situs-of-injury requirement in subsection (b), in light of the explicit limitations in the other subsections, reflects an intent not to limit that subsection in the same manner. *Id.* at 362 (Duhe, J., dissenting). The different treatment of subsection (b) is quite clear, given that it is the only subsection not to incorporate the situs definition of subsection (a). *See* 43 U.S.C. § 1333. This distinction ought to be given effect.

Moreover, a comparison of the language of the different provisions strongly implies that subsection (b)'s coverage extends beyond the outer continental shelf. Subsection (c) applies the NLRA to unfair labor practices "occurring *upon* any artificial island, installation, or other [fixed platform]," *id.* § 1333(c), while subsection (b) provides coverage for injuries "occurring *as the result of* operations conducted on the outer Continental Shelf," *id.* § 1333(b) (emphasis added). Congress had the ability to craft a situs-of-injury requirement – and did so within the very same section of the statute – yet left it out of subsection (b). *See also* Longshore & Harbor Workers' Compensation Act, 33 U.S.C. § 903(a) (limiting coverage to injuries "occurring *upon* the navigable waters of the United States" (emphasis added)). We should not read one in.

Accordingly, we find that the language of § 1333(b) is unambiguous in not including a situs-of-injury requirement. Indeed, our interpretation of § 1333(b) is confirmed by a Fifth Circuit decision, *Demette v. Falcon Drilling Co., Inc.*, 280 F.3d 492, 500 (5th Cir. 2002), *overruled on other grounds, Grand Isle Shipyard, Inc. v. Seacor Marine, LLC*, 589 F.3d 778 (5th Cir. 2009) (en banc), subsequent to *Mills*. *Demette* held that "section 1333(b) contains only a status requirement." *Id.* at 500 n.29. According to *Demette*, the situs-of-injury requirement derives from § 1333(a)(1), which "creates a 'situs' requirement for the application of other sections of the OCSLA, including sections 1333(a)(2) and 1333(b)." *Id.* at 496. As *Demette* explains, "[i]n order for the LHWCA to apply by virtue of section 1333(b), . . . the injured worker must satisfy the 'status' requirement of section 1333(b) as well as the situs requirement of section 1333(a)(1)." *Id.* at 498. This is, however, a misstatement of *Mills*'s holding, which clearly finds a situs-of-injury requirement in the language of § 1333(b).[4] *Mills*, 877 F.2d at 362. This disagreement

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[4] In fact, *Demette* 's interpretation of *Mills* would put that decision in direct conflict with the Supreme Court's decision in *Tallentire*. In an effort to avoid overruling its own precedent applying OCSLA to helicopter crashes on the waters above the outer continental shelf, *Mills* defined § 1333(b) as applying to "injury or death on an OCS platform or the waters above the OCS." 877 F.2d at 362. *Tallentire*, however, expressly held that § 1333(a) does not apply to the waters above the outer continental shelf. 477 U.S. at 219. Had *Mills* pulled its situs-of-injury

(Continued on following page)

among Fifth Circuit panels underscores the extent to which *Mills* departed from the plain language of § 1333(b) and confirms what we find fairly obvious – a situs-of-injury test is unambiguously absent from § 1333(b).

The legislative history does not indicate otherwise. The *Mills* court interpreted § 1333 as a "gap-filler," solely intended to fill a void in substantive law due to the fact that the outer continental shelf lies beyond state jurisdiction. *See Mills*, 877 F.2d at 358. Therefore, *Mills* reasoned, no provision of OCSLA was intended to apply outside that situs. The opinion cited a statement during debate on the floor of the Senate that "[OCSLA] is legislatively joined with the Submerged Lands Act. . . . [T]he Submerged Lands Act deals with lands within State boundaries, while this bill [OCSLA] concerns itself with the areas seaward of such boundaries." *Id.* at 359 n.6 (quoting 99 Cong. Rec. 6962 (daily ed. June 22, 1953) (statement of Sen. Cordon)). The House Conference Report also notes that under OCSLA "certain Federal laws are made applicable *to the [outer continental shelf] area* such as the [LHWCA]." H.R. Rep. No. 83-1031, at 12 (1953) (Conf. Rep.) (emphasis added).

However, certain legislative history cuts against the gap-filing interpretation of § 1333(b). In particular, a provision allowing benefits only "if recovery for

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test from § 1333(a), its holding would be inconsistent with *Tallentire*.

such disability or death through workmen's compensation proceedings is not provided by State law," was deleted from the original version of Section 4(c), which became § 1333(b). S. Rep. No. 83-411, at 16 (1953). The Senate committee explained that "[i]t was deemed inadvisable to have the [LHWCA] apply only if there is no applicable State law. By this amendment, all workers on the outer shelf not already protected under laws respecting seamen are protected by the [LHWCA]." *Id.* at 23. The deletion of this anti-overlap provision gives a clear indication that Congress intended to provide LHWCA coverage regardless of the applicability of state law, seriously undercutting the conception of § 1333(b) as a gap-filler.[5]

This makes sense, given that at the time of OCSLA's enactment the workers' compensation laws of most relevant states provided coverage for injuries occurring outside state jurisdiction if the employment contract was made within the state. *See, e.g.*,

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[5] *Mills* attempts to explain away the deletion, arguing that it "indicates that, at most, Congress was prepared to tolerate overlapping federal and state workers' compensation coverage on the OCS itself. But the proviso's deletion does not justify overlapping coverage for employees whose feet are planted firmly on state soil." *Mills*, 877 F.2d at 360. The Fifth Circuit essentially concedes that § 1333(b) was not intended to be a gap-filler. Its summary assertion that Congress was only willing to "tolerate" overlapping coverage on the outer continental shelf and nowhere else is supported by no more than general statements by individual legislators that OCSLA "concerns itself" with the outer continental shelf.

Ohlhausen v. Sternberg Dredging Co., 218 La. 677, 680-81 (1951) (applying Louisiana workers' compensation statute to injury occurring in Arkansas); *Maryland Cas. Co. v. Brown*, 131 Tex. 404, 406, 408 (1938) (holding that "an injury 'outside the state' [of Texas] is compensable, regardless of where it may occur" and noting that "practically every state in the Union has made provision for extension of the benefits of compensation laws to employees injured 'outside the state'"); *Alaska Packers' Ass'n v. Indus. Accident Comm'n of Cal.*, 1 Cal.2d 250, 257-58 (1934) (holding that California workers' compensation law may apply to injury sustained in Alaska). Because most state workers' compensation laws applied extraterritorially at the time, there was generally no gap to fill.

Finally, *Mills* points to an exchange among senators during the committee hearings where the senators concluded that a worker on a platform above state waters would be covered by state workers' compensation laws even if the drilling slanted into the outer continental shelf. *Outer Continental Shelf: Hearings on S. 1901 Before the Comm. on Interior and Insular Affairs*, 83d Cong. 15-16 (1953) ("*OCS Comm. Hearings*"). The *Mills* majority relied on this exchange as evidence of intent that the site of the injury would control coverage. 877 F.2d at 359. The reliance is unwarranted for two reasons. First, the senators were debating the early version of the bill that contained the anti-overlap provision that was later deleted. *See OCS Comm. Hearings, supra*, at

29-30. At that time, the issue of whether state law applied was quite significant as it would preclude OCSLA coverage. But the exchange loses its significance in light of the subsequent deletion of the anti-overlap provision.[6]

Second, the exchange came during the discussion of Section 4(a) of the bill, the federal jurisdiction and choice-of-law provision later codified at § 1333(a). *Id.* at 8-16. The committee was not yet considering the text of Section 4(c), the workers' compensation provision. *See id.* at 29. The slant-drilling hypothetical was part of a discussion about the applicability of substantive law in general. *See id.* at 13-17. Workers' compensation was simply an example used, along with marriage and domestic laws, to illustrate the bounds of the choice-of-law provision. *See id.* The usefulness of this exchange in relation to the actual text of Section 4(c) is minimal.

Considered as a whole, the legislative history is inconclusive on the situs issue, other than establishing that § 1333(b) was not intended to simply fill a gap in workers' compensation law. There is certainly nothing clear enough to persuade us that our reading of the statute is incorrect.

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[6] In any case, the senators only concluded that state law applied on state soil and never considered whether LHWCA benefits might also apply. *See id.* at 15-16; *Mills*, 877 F.2d at 363 (Duhe, J., dissenting).

Nor are we persuaded that policy considerations compel the addition of a situs-of-injury requirement. Pacific Operations points out the supposed absurdity of workers receiving extra coverage on shore because they "fortuitously" work to further outer continental shelf operations. Pacific Operations also complains about the burden on employers having to purchase coverage under both state and federal schemes.

First, Congress clearly contemplated overlapping coverage with the deletion of the anti-overlap provision in § 1333(b) and has enacted overlapping coverage in other related contexts. *See* 33 U.S.C. § 903(a) (applying LHWCA coverage to shoreside activities); *Sun Ship, Inc. v. Pennsylvania,* 447 U.S. 715, 719-20 (1980). Second, the supposed absurdity in coverage is a natural consequence of line-drawing, which is Congress's decision, not ours. Coverage is just as absurd under the line drawn by *Mills:* an employee is covered for a helicopter crash 3.1 miles from shore, but not 2.9 miles, even though the activity and risk is identical. Finally, Congress may have had good reason to apply uniform coverage across the full range of activities of an outer continental shelf worker – including work on a platform, in transit to and from a platform, on pipelines between platforms and shore, or at onshore facilities crucial to the mineral extraction process – so that a worker does not step in and out of coverage.

In any case, it is not necessary to speculate about policy, as the language of § 1333(b) is clear in not containing a situs-of-injury requirement. "[I]f Congress'

coverage decisions are mistaken as a matter of policy, it is for Congress to change them. We should not legislate for them." *Herb's Welding I*, 470 U.S. at 427. Because the language is unambiguous and the legislative history and policy considerations do not compel a contrary result, we find that § 1333(b) does not contain a situs-of-injury requirement.

C.

Pacific Operations presents a different argument, contending that § 1333(a) sets forth a situs requirement that is intended to apply to all of § 1333, including subsection (b). This is a novel argument; it has no support in either *Mills*, the Fifth Circuit decision, or *Curtis*, the Third Circuit decision. The only case supporting the proposition is *Demette*, the Fifth Circuit decision that misstates *Mills*' holding.

Section 1333(a)(1) provides that:

> The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, . . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

43 U.S.C. § 1333(a)(1). This subsection simply provides for federal law and jurisdiction over the situs.

Nothing in the language purports to limit the applicability of the Constitution, federal laws, or jurisdiction to the outer continental shelf, nor is there anything applying the subsection (a)(1) situs to any other parts of § 1333.

Section 1333(a)(2) does not provide a basis for an overarching situs requirement either. It states that:

> the civil and criminal laws of each adjacent State . . . are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf.

Id. § 1333(a)(2)(A). Again, nothing purports to limit state law to the subsection (a) situs, nor to apply that situs to the other § 1333 subsections.

This is consistent with the structure of § 1333. Each subsection has its own situs definition, some broader and some narrower than subsection (a)'s. For example, the subsection (c) situs is narrower, applying the NLRA to unfair labor practices "occurring upon any artificial island, installation, or other device referred to in subsection (a)," but not to occurrences on the subsoil or seabed. *Id.* § 1333(c). The subsection (d) situs is broader, allowing Coast Guard safety regulations for "the artificial islands, installations, and other devices referred to in subsection (a) of

this section *or on the waters adjacent thereto.*" *Id.* § 1333(d) (emphasis added). As the Supreme Court held in *Tallentire*, § 1333(a) does not apply to the waters above the outer continental shelf. 477 U.S. at 219. If subsection (a) was intended to be a strict situs requirement for the entire statute, there would be no need for individualized situs tests for each subsection, much less ones that are inconsistent with subsection (a).

Moreover, each subsection expressly incorporates a portion of the subsection (a) situs in their own situs definitions – with the significant exception of subsection (b), the workers' compensation provision. If subsection (a) applied to all other provisions by its own terms, there would be no need for those provisions to independently incorporate parts of it. And because subsection (a) is referenced in each subsection *except* subsection (b), the obvious conclusion is that subsection (b) was not intended to be limited by subsection (a).

The legislative history of § 1333 also conclusively demonstrates that subsection (a) was not intended to limit the other provisions. Subsection (b) was originally a jurisdictional provision, providing federal courts with "original jurisdiction of cases and controversies *arising out of or in connection with* any operations conducted on the outer Continental Shelf." Pub. L. No. 83-212, § 4(b), 67 Stat. 462, 463 (1953) (emphasis added). This was clearly meant to encompass

more than just occurrences on the subsection (a) situs.[7]

The theory that subsection (a) provides a situs requirement applicable to all of § 1333 is simply inconsistent with its plain language, statutory structure, and legislative history. Subsection (a) merely extends federal jurisdiction and federal and state law to the outer continental shelf. It has no applicability beyond that purpose, other than to provide a situs definition that several other provisions expressly incorporate. Because subsection (b) does not incorporate (a), that provision has no bearing on our analysis.

We hold that § 1333(b) may apply to injuries occurring outside the situs of the outer continental shelf, so long as they occur "as the result of operations conducted on the outer continental shelf."

D.

We do not, however, find that Congress intended to enact a simple "but for" test in covering injuries that occur "as the result of" outer continental shelf

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[7] When the statute was amended in 1978 to merge subsection (b) with the workers' compensation provision in subsection (c), the House Conference Report stated that "this amendment involves no change in existing law. It was not the intent . . . to alter in any way the existing coverage of the [LHWCA]." H.R. Rep. 95-1474, at 81 (1978) (Conf. Rep.), *reprinted in* 1978 U.S.C.C.A.N. 1674, 1680.

operations. Injuries with a tenuous connection to the outer continental shelf are not covered. *Cf. Black Hills Aviation,* 34 F.3d at 975 ("as a result of" requires more than just a "connection with"). Thus, we do not agree with, and decline to adopt, the Third Circuit's decision in *Curtis* to the extent that it requires only a "but for" test of causation. *See* 849 F.2d at 811.

Instead, we adopt the following test: the claimant must establish a substantial nexus between the injury and extractive operations on the shelf. To meet the standard, the claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations. An injury sustained during employment on the outer continental shelf itself would, by definition, meet this standard. However, an accountant's workplace injury would not be covered even if related to outer continental shelf operations, while a roustabout's injury in a helicopter en route to the outer continental shelf likely would be. We leave more precise line-drawing to the specific factual circumstances of later cases.

This is consistent with the pre-*Mills* Fifth Circuit interpretation of § 1333(b), which we endorse. Prior to *Mills,* the Fifth Circuit had long held that § 1333(b) applied to injuries occurring outside the outer continental shelf. *See Nations v. Morris,* 483 F.2d 577 (5th Cir. 1973) ("OCSLA, in its incorporation of [the LHWCA], did not speak in terms of injuries occurring *on* such platforms so as to distinguish them from

those *off* the platforms . . . Obviously Congress purposefully established a system that would apply without regard to physical location."). However, it required a more direct connection than simple "but for" causation. In *Herb's Welding II,* the Fifth Circuit denied OCSLA benefits to a welder working on a platform in state waters, even though it was connected by pipeline to platforms on the outer continental shelf, upon which the welder spent approximately 25% of his time. 766 F.2d at 899-900. The court reasoned that the accident would have occurred regardless of whether the employer had the outer continental shelf rigs. *Id.* at 900. It contrasted helicopter crash cases where the employee's "work had furthered the operations of a fixed rig on the shelf and was in the regular course of extractive operations on the shelf." *Id.*

In *Mills v. Director, Office of Workers' Compensation Programs,* 846 F.2d 1013 (5th Cir. 1988), *rev'd en banc,* 877 F.2d 356 (5th Cir. 1989), the three-judge panel decision later reversed by the *Mills* en banc panel, the court clarified the scope of the then-prevailing "but for" test in the Fifth Circuit:

> Our decision does not extend LHWCA coverage to those whose connection with operations on the Shelf is tenuous. Workers like [the welder in *Herb's Welding II*] whose work is only indirectly connected with the Shelf will still not be covered. The "but for" test this Circuit has adopted is not the simple "*causa sine qua non*" test of tort law, but

> includes the requirement that the claimant show a nexus between the work being done and operations on the shelf similar to the proximate cause test in tort law; it requires that the work "further[s] the operation of a fixed rig on the shelf *and [is] in the regular course of extractive operations on the shelf.*"

Id. at 1015 (quoting *Herb's Welding II*, 766 F.2d at 900) (footnote omitted). Applying this test, the court held that a welder injured during the onshore construction of a platform destined for the outer continental shelf was covered by OCSLA. *Id.* This holding was, of course, reversed by the Fifth Circuit en banc panel in a 9-5 vote. *Mills*, 877 F.2d at 357.

In this case, the BRB affirmed the dismissal of Petitioner's OCSLA claim because Valladolid's injury did not satisfy the *Mills* situs-of-injury test. Because we decline to adopt that test, we remand the OCSLA question to the BRB for further consideration consistent with this opinion.

IV.

We next consider whether the BRB erred in denying benefits under the LHWCA. Under 33 U.S.C. § 903(a):

> compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock,

> terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

A LHWCA "employee" is "any person engaged in maritime employment." *Id.* § 902(3). Thus, a claimant seeking workers' compensation under the LHWCA must establish both a maritime situs and a maritime status. *Herb's Welding I,* 470 U.S. at 415-16; *Peru v. Sharpshooter Spectrum Venture LLC,* 493 F.3d 1058, 1061 (9th Cir. 2007).

Petitioner contends that the BRB erred in affirming the ALJ's determination that the onshore La Conchita facility, where Valladolid was killed, was not a maritime situs. Petitioner does not contest the ALJ's factual findings regarding the facility, but argues that the BRB should have reversed the ALJ on the legal question of whether La Conchita qualifies as an "adjoining area customarily used by an employer in loading [or] unloading . . . a vessel." *Id.* § 903(a). We reject Petitioner's position and affirm the BRB.

We use a "functional relationship" test in determining whether a particular facility is a § 903(a) "adjoining area." *Brady-Hamilton Stevedore Co. v. Herron,* 568 F.2d 137, 141 (9th Cir. 1978). We consider, among other factors:

> the particular suitability of the site for the maritime uses referred to in the statute; whether adjoining properties are devoted primarily to uses in maritime commerce; the

> proximity of the site to the waterway; and whether the site is as close to the waterway as is feasible given all of the circumstances in the case.

Id. Although physical congruity with navigable water is not required, the facility must be "used as an integral part of longshoring operations." *Id.*

Applying the *Herron* factors, we agree with the BRB that La Conchita is not a maritime situs. Although the facility is only 250-300 feet from the ocean, it is separated from the water by a highway and railroad tracks and has no direct access to any pier, dock, or other loading facility. *See Motoviloff v. Dir., Office of Workers' Comp. Programs,* 692 F.2d 87, 89 (9th Cir. 1982). The closest pier used by Pacific Operations is the Casitas Pass Pier, roughly three miles away. There are no adjoining properties engaged in maritime commerce.

Petitioner argues that La Conchita should be considered a "transshipment" facility because scrap metal from the offshore platforms was dumped there before being sold to third parties. Petitioner analogizes to *P.C. Pfeiffer Co. v. Ford,* 444 U.S. 69 (1979), where the Supreme Court held that two warehousemen, who handled cargo within a port but were not permitted to move cargo directly from or onto a vessel, were LHWCA "employees." *Id.* at 71, 83. The Court held that the warehousemen "were engaged in maritime employment because they were engaged in

intermediate steps of moving cargo between ship and land transportation." *Id.* at 82-83.

We find the analogy unpersuasive. First of all, *Pfeiffer* never addressed the situs requirement because the injuries occurred on a dock and a pier, which are indisputably maritime situs. Second, the handling of scrap metal at La Conchita did not involve "moving cargo directly from ship to land transportation." *Id.* The scrap metal was unloaded at the pier by third-party longshoremen, loaded into trucks driven by third-party drivers, and driven three miles to La Conchita, where it was dumped and would wait for up to two years before being hauled away by third-party dealers. The maritime activities – the movement of cargo "directly from ship to land transportation" – began and ended at the Casitas Pass Pier. Finally, La Conchita is simply not an "adjoining area" within the meaning of § 903(a). It is three miles from the pier and not adjacent to any maritime facilities.

The record demonstrates that the primary purpose of the facility – and the only reason for its proximity to the coastline – is to receive and process crude oil slurry extracted by the offshore platforms, a non-maritime activity. *Herb's Welding I*, 470 U.S. at 422-24. Its use as a convenient dumping ground for scrap metal from the platforms does not convert it into a maritime situs.

Accordingly, we affirm the BRB's denial of benefits under the LHWCA. Because Valladolid's injury

does not satisfy the situs requirement, and because the BRB did not reach the status issue, we do not address whether Valladolid was a maritime employee. *Williams v. Dir., Office of Workers' Comp. Programs,* 825 F.2d 246, 247 (9th Cir. 1987); *Hurston v. Dir., Office of Workers' Comp. Programs,* 989 F.2d 1547, 1548 n. 3 (9th Cir. 1993).

V.

We hold that the OCSLA workers' compensation provision, 43 U.S.C. § 1333(b), applies to any injury resulting from operations on the outer continental shelf, regardless of the location of the injury. An injury is "the result of" outer continental shelf operations if there is a substantial nexus between the injury and the operations. We therefore reject the situs-of-injury test adopted by the BRB, and remand for further considerations consistent with this opinion.

We also hold that the BRB did not err in finding that La Conchita was not a maritime situs. Accordingly, we affirm the denial of workers' compensation benefits under the LHWCA.

Each side shall bear its owns costs.

GRANTED in part, DENIED in part, and REMANDED.

U.S. Department of Labor
Benefits Review Board
P.O. Box 37601
Washington DC 20013-7601

[SEAL]

BRB No. 07-0965

L.V. (Widow of J.V.) Claimant-Petitioner v. PACIFIC OPERATIONS OFFSHORE, LLP and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA Employer/Carrier-Respondents	)	**PUBLISHED** DATE ISSUED: **AUG 12 2008** DECISION and ORDER

Appeal of the Order Denying the Claimant's Motion to Withdraw or Amend Admissions, Denying the Respondents' Motion to Strike, and Granting Summary Decision of William Dorsey, Administrative Law Judge, United States Department of Labor.

Joshua T. Gillelan II (Longshore Claimants' National Law Center), Washington, D.C., and Timothy K. Sprinkles (Law Offices of Charles D. Naylor), San Pedro, California, for claimant.

Michael W. Thomas and Shana L. Prechtl (Laughlin, Falbo, Levy & Moresi), San Francisco, California, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Order Denying the Claimant's Motion to Withdraw or Amend Admissions, Denying the Respondents' Motion to Strike, and Granting Summary Decision (2005-LHC-0343) of Administrative Law Judge William Dorsey rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act), as extended by the Outer Continental Shelf Lands Act, 43 U.S.C. §1301 *et seq.* (OCSLA). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Decedent worked for employer as a roustabout primarily at its offshore oil platforms, designated as Hogan and Houchin, which are located more than three miles off the coast of California, on the Outer Continental Shelf. Decedent also occasionally worked

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[1] Claimant is decedent's surviving spouse.

at employer's crude oil flocculation facility, designated La Conchita, in Ventura, California. On June 2, 2004, decedent was directed by his immediate supervisor, Gordon Boswell, to take a forklift to the rear yard of the La Conchita plant and clean up some scrap metal debris. Mr. Boswell stated that approximately an hour and fifteen minutes later he found decedent lying on his back next to a plantain tree roughly ten feet off of one of the service roads within the plant facility, with the forklift resting on his abdomen and chest.

Decedent was pronounced dead at 5:27 p.m. as a result of asphyxia by abdominal and chest compression. An accident report stated that it appeared that decedent stood on top of the raised tines of the forklift to harvest fruit hanging from the plantain tree beyond the reach of a person on the ground. Presumably, the forklift was stopped while he did this, but for some unknown reason, the forklift moved forward, which caused decedent to lose his balance, fall in front of the forklift, and sustain fatal injuries when it rolled on top of him.

Claimant filed the instant claim, alleging that decedent's death was covered under either the Act or its OCSLA extension, since decedent was engaged in both maritime and oil production employment at covered locations.[2] Employer controverted the claim

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[2] Employer paid benefits pursuant to the California Workers' Compensation Act for 52 weeks following decedent's death

(Continued on following page)

on coverage grounds and subsequently moved for summary decision with the administrative law judge, citing a lack of coverage under both the Act and the OCSLA.

Addressing employer's motion for summary decision, the administrative law judge found that claimant failed to submit any evidence raising an issue of fact that her claim falls within the coverage of either the Act or the OCSLA.[3] The administrative law judge also found that employer is entitled to summary decision as a matter of law because, applying the undisputed facts to the applicable law, he found that decedent was not a maritime worker on a maritime situs, and/or was not killed in a location that satisfies the OCSLA's situs requirement. Accordingly, the administrative law judge found that claimant is not entitled to benefits under either the Act or the OCSLA. He thus granted employer's motion for summary decision.

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at a rate of $807.69 per week. The parties agreed that decedent's average weekly wage at the time of his death was $928.22.

[3] In his decision, the administrative law judge also found that claimant is deemed to have admitted all of the requests for admissions put forth by employer on February 25, 2005, by operation of 29 C.F.R. §18.20, since claimant failed to serve her responses to employer's requests within thirty days of service. The administrative law judge then considered but rejected claimant's motion to withdraw or amend the deemed admissions based on his finding that claimant's "confusing, evasive, and late answers" have prejudiced employer's ability to defend the claim.

On appeal, claimant challenges the administrative law judge's grant of employer's motion for summary decision and consequent denial of benefits under the Act and/or OCSLA. Employer responds, urging affirmance.

For a claim to be covered by the Act, a claimant must establish that the injury occurred upon the navigable waters of the United States, including any dry dock, or that it occurred on a landward area covered by Section 3(a), and that the employee's work is maritime in nature and is not specifically excluded by the Act. 33 U.S.C. §§902(3), 903(a); *Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 15 BRBS 62(CRT) (1983); *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 11 BRBS 320 (1979); *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 6 BRBS 150 (1977). Thus, in order to demonstrate that coverage under the Act exists, a claimant must satisfy the "situs" and the "status" requirements of the Act. *Id.*; *see also Crapanzano v. Rice Mohawk, U.S. Constr. Co., Ltd.*, 30 BRBS 81 (1996).

Claimant argues that the administrative law judge erred in finding that employer's La Conchita facility does not meet the situs requirement of the Act. Section 3(a) of the Act provides, in pertinent part, that:

> compensation shall be payable under this chapter . . . only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock,

> terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

33 U.S.C. §903(a). The United States Court of Appeals for the Ninth Circuit, in whose jurisdiction this case arises, has held that the phrase "adjoining area" should be read to describe a site which has a functional relationship with maritime commerce and a geographical nexus with navigable waters.[4] *Brady-Hamilton Stevedore Co. v. Herron*, 568 F.2d 137, 7 BRBS 409 (9th Cir. 1978).

The administrative law judge found that claimant did not establish the situs requirement, as there is no evidence establishing that employer's La Conchita facility has a functional relationship with any maritime commerce. The record establishes that the La Conchita facility, which is located approximately 250 to 300 feet from the Pacific Ocean, is a receiving station for the petroleum and oil that is pumped from the two offshore platforms. Employer's Exhibit (EX) 2, Dep. at 15. Specifically, a mixture of elements called "slurry" is pumped through pipelines from the platforms to the plant, where it is processed into oil, water, gas and solids. EX 2, Dep. at 34; EX 14, Dep. at 13. The processed oil and gas are then shipped away from La Conchita by pipeline to third

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[4] The record contains no evidence, nor does claimant raise any contention, that decedent's death occurred at one of the sites specifically enumerated in Section 3(a), 33 U.S.C. §903(a).

parties. EX 2, Dep. at 34; EX 14, Dep. at 16. The facility has numerous storage tanks which temporarily hold the slurry, as well as the processed oil and gas, and its byproducts. EX 2, Dep. at 33-34. However, there is no evidence that the La Conchita facility is customarily used by employer in loading, unloading, repairing, dismantling or building a vessel. As such, it has no functional relationship with navigable water, *i.e.*, the Pacific Ocean.

Additionally, the La Conchita facility served as a storage area for scrap metal which came from the platforms and from around the plant. EX 2, Dep. at 40; EX 14, Dep. at 33. Specifically, the scrap metal consisted of old pipe, old pieces of storage tanks, old catwalk, old chain, and/or old cable. EX 2, Dep. at 42. Scrap metal from the offshore platforms would be initially collected in bins, which once full, would be loaded on the crew boat. The scrap metal was then unloaded from the crew boat at the Casitas Pass Pier and loaded onto a truck and delivered to the La Conchita facility, which is approximately three miles away. EX 2, Dep. at 42. The truck, operated by a third-party contractor, would dump the scrap metal out of the bins at various locations around the La Conchita facility. *Id.*; EX 14, Dep. at 32. The scrap metal would, perhaps once every two years, be "centralized" by workers at the La Conchita plant, including decedent, who was performing this work at the time of his death, and thereafter sold by the ton to contractors. EX 2, Dep. at 43; EX 14, Dep. at 33-34. The contractors would come in and cut the scrap

metal into manageable pieces, put it into bins, and then haul it away to a metal scrap yard. *Id.* As for other necessities related to employer's oil operations, "tools and parts and equipment [necessary for the platforms] all come from different vendors all over Southern California and the United States," EX 14, Dep. at 17, and they are "shipped by the vendors" directly to the staging area at the pier. EX 14, Dep. at 21. Thus, there is no evidence that the La Conchita facility served as a staging area for employer's use of the Casitas Pass Pier for either its employees or equipment.

The undisputed facts support the administrative law judge's finding that employer's La Conchita facility is not a covered situs pursuant to Section 3(a) of the Act. Specifically, there is no evidence that the La Conchita facility is an "adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel." 33 U.S.C. §903(a). Rather, the proximity of employer's La Conchita facility to navigable waters is not dictated by maritime concerns. *Bennett v. Matson Terminals, Inc.*, 14 BRBS 526 (1981), *aff'd sub nom. Motoviloff v. Director, OWCP*, 692 F.2d 87 (9th Cir. 1982). It therefore has no functional nexus with any maritime activities. *Sisson v. Davis & Sons, Inc.*, 131 F.3d 555, 31 BRBS 199(CRT) (5th Cir. 1998); *Charles v. Universal Ogden Services*, 37 BRBS 37 (2003) (Board affirmed administrative law judge's finding that claimant's injury did not occur on an "adjoining area" where the proximity of employer's facility to the

Mississippi River was not dictated by maritime concerns and there was no functional relationship between employer's warehouse and the Mississippi River in that the area is not used for loading, unloading, building or repairing vessels); *cf. Waugh v. Matt's Enterprises, Inc.*, 33 BRBS 9 (1999) (field where scrap metal is hauled from barges is covered situs). Consequently, as the undisputed facts establish that employer's La Conchita facility, where the employee's death occurred, was not used for loading, unloading, repairing, dismantling, or building a vessel, we affirm the administrative law judge's finding that decedent's injury did not occur on a situs covered under the Act. *See generally Arjona v. Interport Maintenance Co., Inc.*, 34 BRBS 15 (2000); *Bennett,* 14 BRBS 526. We, therefore, affirm the administrative law judge's finding that claimant has not established coverage under the Act and his grant of summary judgment for employer on this issue.[5]

Alternatively, claimant contends that the administrative law judge erred in denying benefits under the OCSLA. Claimant argues that the administrative law judge committed legal error by stating that the

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[5] Thus, we need not address claimant's assertions regarding the administrative law judge's finding that claimant did not establish the status element under the Act, as our affirmance of the administrative law judge's situs finding renders the status issue moot in this case. *Perini North River Associates*, 459 U.S. 297, 15 BRBS 62(CRT); *Williams v. Director, OWCP*, 825 F.2d 246, 20 BRBS 25(CRT) (9th Cir. 1987), *aff'g Williams v. Pan Marine Construction*, 18 BRBS 98 (1986).

decision of the United States Supreme Court in *Offshore Logistics v. Tallentire*, 477 U.S. 207 (1986), as well as decisions rendered by the United States Courts of Appeals for the Fifth and Ninth Circuits, require a situs-of-injury test, as opposed to only a situs-of-mineral extraction operations test, in order to establish coverage under the OCSLA. In particular, claimant argues that the Fifth Circuit stated, in *Demette v. Falcon Drilling Co.*, 280 F.3d 492, 500 n. 29, 35 BRBS 136 n. 29(CRT) (5th Cir. 2002), that the OCSLA contains "only a status requirement," and moreover, that the Ninth Circuit, in whose jurisdiction the instant case arises, similarly held that Section 1333(b) imposed only a "but for" test related to covered offshore operations and contained no situs-of-injury requirement. *Kaiser Steel Corp. v. Director, OWCP*, 812 F.2d 518 (9th Cir. 1987), *aff'g Robarge v. Kaiser Steel Corp.*, 17 BRBS 213 (1985).

Compensation is available under the Longshore Act for injuries to non-seaman [sic] occurring as a result of operations on the OCS for the purpose of "exploring for, developing, or producing resources" on the OCS. 43 U.S.C. §1333(a)(1), (b); *Tallentire*, 477 U.S. 207; *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969); *Kaiser Steel Corp*, 812 F.2d at 520. The issue in this case concerns whether the OCSLA applies only if the employee's injury or death occurs on the OCS.[6]

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[6] Broadly speaking, the OCS requires that the employee be engaged in work in furtherance of the exploration, development,

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In *Curtis v. Schlumberger Offshore Service, Inc.*, 849 F.2d 805, 21 BRBS 61(CRT) (3d Cir. 1988), the United States Court of Appeals for the Third Circuit held that a claimant, injured on a highway in New Jersey on his way to a heliport to be transported to the OCS, was covered under the OCSLA. The court rejected a situs requirement for OCSLA coverage, and imposed only a "but for" test, *i.e.*, would the claimant have sustained injuries "but for" the operations on the shelf. The court noted that there was no limitation in Section 1333(b) to "artificial islands and fixed structures" as there is in Section 1333(a)(1).[7]

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removal, or transportation of natural resources (the "but for" or status test) from the subsoil and seabed of the OCS or any artificial stand or installation attached to or erected on the seabed of the OCS (the situs test). The Board's decision in *Robarge*, 17 BRBS 213, did not address the situs-of-injury issue, as it noted that the only issue requiring resolution involved status under the OCSLA. Specifically, the Board recognized that, as employer conceded that claimant's injury occurred during construction of a fixed platform located on the outer continental shelf, *i.e.*, employer conceded situs under the OCSLA, the only question was whether claimant's activities in platform construction constituted "development" for purposes of 43 U.S.C. §1331(a)(1).

[7] The Third Circuit noted that Section 1333(a) of the pre-1978 version of the Lands Act makes no references to injuries and is a provision intended for the separate purpose of asserting federal jurisdiction over the seabed underlying the outer continental shelf. *Curtis*, 849 F.2d at 809, 21 BRBS at 68 (CRT). It further stated that the only criteria Section 1333(b) imposes for securing Longshore benefits is for injured employees to be involved in "any operations conducted on the outer continental shelf for the purpose of exploring for, [and] developing the natural resources of the outer continental shelf." *Id.*; 43 U.S.C. §1333(b).

Id. It therefore construed Section 1333(b) as extending Longshore Act coverage to all employees who sustain injuries while working to develop the mineral wealth of the OCS. *Curtis*, 849 F.2d at 810, 21 BRBS at 70 (CRT).

Subsequently, the Fifth Circuit held, in *Mills v. Director, OWCP*, 877 F.2d 356, 22 BRBS 97(CRT) (5th Cir. 1989) (*en banc*), that the claimant, who was a land-based worker injured during construction on state land of an oil production platform destined for the OCS, did not qualify for benefits under the OCSLA because he did not satisfy the situs-of-injury requirement.[8] In reaching its conclusion, the Fifth Circuit stated that, in furtherance of Congressional intent "to establish a bright-line geographic boundary for Section 1333(b) coverage," the OCSLA applies to those who "suffer injury or death on an OCS platform or the waters above the OCS" and who "satisfy the 'but for' status test" described in *Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 17 BRBS 78(CRT) (1985), *i.e.*, the injury or death on the OCS would not have occurred "but for" the extractive operations on the shelf. *Mills*, 877 F.2d at 362, 22 BRBS at 102(CRT). Thus, the Fifth Circuit concluded that Section 1331(a)(1) creates a situs-of-injury requirement for the application of other sections of the OCSLA, including Sections 1333(a)(2) and 1333(b). *See also Strong v. B.P.*

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[8] The *Mills* court noted the contrary *Curtis* decision. *Mills*, 877 F.2d at 363, 22 BRBS at 102(CRT).

Exploration & Production, Inc., 440 F.2d 665, 40 BRBS 1(CRT) (5th Cir. 2006); *Demette*, 280 F.3d 492, 35 BRBS 136(CRT). The Board, in cases arising in the Fifth Circuit, has explicitly acknowledged the existence of a situs-of-injury test under the OCSLA, which necessarily requires that the injury occur while the employee was on the OCS.[9] *Kirkpatrick v. B.B.I., Inc.*, 38 BRBS 27, 28 (2004); *Martin v. Pride Offshore, Inc.*, 34 BRBS 192 (2001); *see also Sisson v. Davis & Sons, Inc.*, 131 F.3d 555, 31 BRBS 199(CRT) (5th Cir. 1998).

The Ninth Circuit has not explicitly addressed the situs requirement, but it has stated, albeit in *dicta*, that "the situs requirement is a predicate for coverage under OCSLA."[10] *A-Z Int'l v. Phillips*, 179

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[9] In contrast to claimant's assertion, the Fifth Circuit did not hold that the OCSLA contains only a status requirement. Rather, the court articulated that Section 1333(b) of the OCSLA, 43 U.S.C. §1333(b), "contains only a status requirement." *Demette*, 280 F.3d at 500 n. 29, 35 BRBS 136(CRT) n. 29. The Fifth Circuit explicitly held that "in order for the LHWCA to apply by virtue of Section 1333(b), notwithstanding any application of the LHWCA of its own force, the injured worker must satisfy the 'status' requirement of Section 1333(b) *as well as the situs requirement of Section 1333(a)(1)*." *Demette*, 280 F.3d at 498, 35 BRBS at 134(CRT) (emphasis added).

[10] In *Phillips*, the Ninth Circuit acknowledged that the administrative law judge denied the claimant's claim because he was not injured, as he had alleged, on the offshore oil platform *Hermosa*. Situs, however, was moot, as the issue considered by the Ninth Circuit on appeal pertained to whether the Board had jurisdiction to review the administrative law judge's certification

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F.3d 1187, 1189 n. 1, 33 BRBS 59(CRT), 61 n. 1 (CRT) (9th Cir. 1999), *citing* 43 U.S.C. §1333 (1994); *see also Tallentire*, 477 U.S. at 219. In support of this statement, the Ninth Circuit cited the language of the Supreme Court in *Tallentire*, 477 U.S. at 219, also referenced by the Fifth Circuit in *Mills*, 877 F.2d at 361, 22 BRBS at 101(CRT), that "Congress determined that the general scope of OCSLA's coverage . . . would be determined principally by locale."

In his decision, the administrative law judge initially found that decedent established "status" under the OCSLA because there is no dispute that his duties for employer, while he worked on platform Hogan, were in furtherance of its exploration and development of oil from the outer continental shelf. *See Barger v. Petroleum Helicopters, Inc.*, 692 F.2d 337 (5th Cir. 1983). After reviewing the conflicting positions on situs put forth by the Third and Fifth Circuits, the administrative law judge addressed the question of decedent's coverage under the OCSLA in terms of whether he sustained "an injury on the subsoil and seabed of the outer continental shelf, or the artificial islands and structures erected thereon the waters above it." Order at 18. The administrative law judge concluded that as decedent was killed while harvesting plantains at an onshore facility that served offshore oil platforms, the situs element for coverage

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to the district court of his finding that claimant filed a fraudulent claim. *Phillips*, 179 F.3d 1187, 33 BRBS 59(CRT).

under the OCSLA could not be satisfied. Accordingly, the administrative law judge denied claimant's claim for benefits under this statute.

In resolving the situs issue, the administrative law judge applied the Fifth Circuit's test as it "adopts the narrow Supreme Court interpretation of situs" in *Tallentire*, 477 U.S. at 218. We reject claimant's contention that the administrative law judge erred in this regard. The language of OCSLA and its legislative history indicate that Congress intended, in writing the OCSLA, to regulate only the OCS. Congress enacted the OCSLA "to define a body of law applicable to the seabed, the subsoil, and the fixed structures . . . on the OCS." *Rodrigue*, 395 U.S. at 355. This is evidenced by the specific language of Section 1333(a)(1) which defines, and by its very nature limits, the coverage of the OCSLA to "the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State." 43 U.S.C. §1331(a)(1); *see also generally Mills*, 877 F.2d at 360-361, 22 BRBS at 99-100(CRT). Absent from this provision, is any Congressional intent to

extend coverage to individuals injured outside the geographical locale comprising the OCS.

As discussed by the Fifth Circuit in *Mills*, 877 F.2d at 360-361, 22 BRBS at 99-100(CRT), the legislative history of the OCSLA supports this position. In discussing S-1901, the bill that became OCSLA, the Senate committee discussed a scenario where a worker in state waters is injured while drilling a slant hole into the OCS and concluded that in such an instance the employee would be covered by state workers' compensation. *See Mills*, 877 F.2d at 361, 22 BRBS at 100(CRT), *citing* Outer Continental Shelf: Hearings on S-1901 before Senate Comm. on Interior and Insular Affairs, 83d Cong., 1st Sess., 12-16 (1953). Thus, Congress intended to make the place of injury a controlling factor in the application of benefits. *Id.*

Additionally, the Supreme Court recognized a geographic boundary to OCSLA coverage in *Tallentire*, 477 U.S. 207. In *Tallentire*, offshore drilling platform workers were killed when the helicopter in which they were riding crashed in the high seas some 35 miles off the Louisiana coast while transporting them from the offshore drilling platform where they worked to their home base in Louisiana. The Supreme Court determined that because the helicopter crash and ensuing death of the platform workers occurred "miles away from the platform and on the high seas," it would not be proper to extend OCSLA to the casualties in that case. *Tallentire*, 477 U.S. at 219. The Supreme Court thus discussed OCSLA situs in terms of injuries which occur within "the narrowly

circumscribed area defined by the statute." In particular, the Court stated, as also noted by the Fifth and Ninth Circuits, that "Congress determined that the general scope of OCSLA's coverage . . . would be determined principally by locale." *Id.*

Thus, the language and legislative history of the OCSLA, in conjunction with the Supreme Court's interpretation thereof, supports the decision of the Fifth Circuit in *Mills*, 877 F.2d at 361, 22 BRBS at 100(CRT), that coverage under the OCSLA involves meeting both a situs-of-injury and status test. Moreover, as the administrative law judge found, the *dicta* in *Phillips* provides a strong indication that the Ninth Circuit is more closely aligned with the Fifth Circuit than the Third Circuit on the issue of whether the OCSLA contains a situs-of-injury test. We thus reject claimant's position that a situs-of-mineral extraction operations test rather than a situs-of-injury test is more appropriate to determine coverage under the OCSLA. As it is undisputed that decedent's injury did not occur while he was working on the OCS, the administrative law judge's finding that claimant did not establish situs under the OCSLA, and thus, cannot obtain coverage under that statute, is affirmed.

Accordingly, the administrative law judge's findings that claimant has not established situs under the Act or the OCSLA, and resulting grant of employer's

motion for summary decision, and consequent denial of benefits, are affirmed.[11]

SO ORDERED.

/s/ Nancy S. Dolder
NANCY S. DOLDER, Chief
Administrative Appeals Judge

/s/ Regina C. McGranery
REGINA C. McGRANERY
Administrative Appeals Judge

/s/ Betty Jean Hall
BETTY JEAN HALL
Administrative Appeals Judge

[11] As the administrative law judge's findings that claimant did not establish that decedent's injury occurred on a covered situs under either the Act or the OCSLA are based on the uncontested facts in this case, we need not address claimant's contentions regarding the administrative law judge's denial of her motion to withdraw or amend the deemed admissions under 29 C.F.R. §18.20.

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[SEAL]

Issue Date: 15 August 2007

CASE NO. 2005-LHC-00343

OWCP No.: 18-83701

In the Matter of:

L.V. AS WIDOW OF J.V. (deceased),

Claimant,

vs.

PACIFIC OPERATIONS OFFSHORE, LLP,

Employer

and

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

Carrier.

Order Denying the Claimant's Motion to Withdraw or Amend Admissions, Denying the Respondents' Motion to Strike, and Granting Summary Decision

I. Introduction

The Claimant's husband (the Decedent) died when a forklift he operated at his employer's crude oil

flocculation plant rolled over him and crushed him. For some reason he had used it in a way unrelated to his job – to harvest fruit. On June 3, 2004, the Decedent's employer,[1] Pacific Operations Offshore, LLP, submitted a claim on the Claimant's behalf and began paying death benefits pursuant to the California Workers' Compensation Act.[2] On July 22, 2004, the Claimant filed for compensation under the Longshore and Harbor Workers' Compensation Act (LHWCA or Longshore Act), 33 U.S.C.A. §§ 901, *et seq.* (West 2007). On February 7, 2006, the Claimant also filed for compensation under the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C.A. § 1333 (West 2007), an extension to the LHWCA. She claims entitlement to benefits under either statute on grounds that the Decedent engaged in both maritime and oil production employment at covered locations.[3] The Employer, together with its carrier, the Insurance Company of

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[1] The parties agree that there was an employer-employee relationship, and that the claim was timely noticed.

[2] Employer provided $807.69 per week for 52 weeks after the decedent's death. The parties agree that his average weekly wage when injured was $928.22.

[3] The Defendants assert that the Claimant is not claiming injury under the LHWCA except as it may have occurred under the OCSLA. However, the Claimant's former counsel believed that jurisdiction is proper under the LHWCA and her current counsel has not stated otherwise. *See,* the Declaration of Diane Middleton in support of the Claimant's Motion to Withdraw or Amend. The parties argued the merits jurisdiction under both statutes, so I accept that the Claimant seeks benefits under either statute.

the State of Pennsylvania, adjusted by AIG Claim Services, Inc. (collectively referred to as the Defendants) controvert these claims for federal benefits on jurisdictional grounds.

Three motions are before me, two discovery disputes and one dispositive motion for summary decision. I deny the Claimant's motion to withdraw or amend and the Defendants' motion to strike, but grant summary decision not only as a result of the Claimant's admissions, but also because the Decedent was not a maritime worker and was not killed in a location that satisfies the OCSLA's situs requirement.

II. Procedural Background

On February 25, 2005, the Defendants served their requests for admissions on the Claimant, which were due by April 1, 2005. Declaration of Michael Thomas in Support of Defendants' Opposition to Claimant's Motion to Withdraw or Amend Deemed Admissions (Dec. Thomas). The Claimant's attorney obtained extensions to respond, first until April 8, then until May 7, 2005. *Id.* The hearing on this case, initially scheduled to proceed on May 16, 2005, was continued to October 17, 2005. Approximately one month before the hearing, the Claimant substituted counsel, whose request for an additional continuance to prepare adequately was granted, and the trial date rescheduled to April 24, 2006. Change in the Claimant's counsel gave rise to two additional continuances, to August 28, and December 11, 2006.

On September 27, 2006, the Defendants moved for summary decision, arguing that the Claimant's failure to respond to their requests for admissions had admitted the matters, thereby disproving coverage under both the LHWCA and the OSCLA. In the alternative, the Defendants insist that there is no dispute of material fact regarding the non-maritime nature of the Decedent's job duties, which disqualifies the Claimant from receiving benefits under the LHWCA, and that the Claimant cannot meet the situs requirements under either statute.

On October 9, 2006, the Claimant moved to withdraw or amend the deemed admissions, on grounds that all of the continuances muddled the deadline for replying, and that it would be manifestly unjust to accept the admissions in light of the Defendants' motion for summary decision. The Defendants opposed the motion to withdraw or amend and later moved to strike the Claimant's reply to their opposition because she had not requested leave to submit a reply brief, that brief was untimely, and it raised new legal arguments and evidence. I requested further argument on the summary decision motion and consequently removed the case from the December 11, 2006 calendar.[4]

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[4] By Order dated October 24, 2006, I directed the Claimant to submit further argument on the Defendants' motion for summary decision. On November 21, 2006, I granted the Defendants leave to reply to the Claimant's argument in opposition to summary decision and continued the trial once again.

III. Factual Background

The employer is a company whose primary business includes oil exploration and extraction. Declaration of Clement M. Alberts in Support of Motion for Summary Decision (Dec. Alberts). It operates a crude oil flocculation facility, La Conchita, in Ventura, California. *Id.* Crude oil is pumped into the plant via pipeline from two offshore platforms designated Hogan and Houchin, which is processed and stored in tanks temporarily before being transported away from the plant by pipeline. *Id.* The Decedent worked as a roustabout both at La Conchita and on offshore platform Hogan, which is located more than three miles off the coast of California on the outer continental shelf. *Id.* He accessed this platform via crew boat from the Casitas Pass Pier, which stands about three miles from La Conchita. *Id.*

At La Conchita, the Decedent performed maintenance and cleaning duties that included painting, sandblasting, weed-pulling, cleaning drain culverts, and operating a forklift. Declaration of Gordon "Scoop" Boswell in Support of Motion for Summary Decision (Dec. Boswell). His regular job duties on platform Hogan involved picking up trash and emptying wastebaskets, washing the decks and well bay, assisting in repairing wellhead safety equipment, piping projects, painting, and assisting on the pipe deck with crane loads going on or off the platform. *Id.* On rare occasions (no more than 2% of his work time) he used a forklift at La Conchita to move scrap metal, which had been transported by boat from the offshore

platforms to a pier, and then by truck from the pier to the onshore plant. Deposition of Chris Magill (Depo. Magill)[5] at 31-33.

At approximately 4:00 PM on June 2, 2004, the Decedent's supervisor, Gordon "Scoop" Boswell, directed him to take a forklift to the rear yard of the La Conchita plant and clean up some debris.[6] Dec. Boswell. About an hour and fifteen minutes later, Mr. Boswell found the Decedent next to a plantain tree roughly ten feet off of one of the service roads within the plant facility. Dec. Alberts. He was lying on his back with a forklift resting on his abdomen and chest. *Id.* He was pronounced dead at 5:27 P.M. Dec. Alberts, Exh 2.

The accident report said it appeared that the Decedent stood on top of the raised tines of the forklift to harvest a hand of fruit hanging from a plantain tree out of reach of a person on the ground. Dec. Alberts, Exh 2. Presumably the forklift was stopped as he did this, but it apparently moved forward for unknown reasons, which caused him to lose his balance, fall in front of the forklift, and sustain fatal injuries when it rolled over him. *Id.*

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[5] This deposition is exhibit 14 in support of the Declaration of Timothy K. Sprinkles in Opposition to Motion for Summary Decision.

[6] Although the Claimant disputes where the Decedent worked on June 1 and 2, 2004, she takes no issue with where and how he died.

IV. Analysis

A. The Claimant's Motion to Withdraw or Amend

A party must respond in writing to a request for admissions within thirty days after service of the request, or each matter is deemed admitted. Fed. R. Civ. P. 36(a); 29 C.F.R. § 18.20 (2006). On February 25, 2005, the Respondents served their requests for admissions on the Claimant's prior attorney, Diane Middleton, which were due by April 1, 2005. She requested an extension until April 8, and then again until May 7, 2005, to which the Respondents agreed. Dec. Thomas. On or about September 14, 2005, the Claimant substituted Charles Naylor as counsel, who explained in a letter to Judge Mapes that he needed to conduct "significant research" and "appropriate investigations" in order to properly respond to the discovery requests, which he acknowledged were past due. Exh. 10 to Dec. Thomas. The Claimant also insists that Mr. Naylor met with Defendants' counsel, Mr. Thomas, to tell him that he needed more time to respond to the discovery requests, but there is no evidence that Mr. Thomas agreed to extend the deadline for the requests for admissions, only that he agreed to a continuance. Regardless of the change in counsel and multiple continuances, the Claimant failed to serve her responses to the Defendants' requests for admissions within thirty days after service. The Claimant is deemed to have admitted all of the requests by operation of 29 C.F.R. § 18.20 (2006).

After the Defendants filed their motion for summary judgment, based in part on the Claimant's lapse in responding to the requests for admissions, the Claimant moved to withdraw or amend her deemed admissions, arguing that a late response should be permitted because the Defendants knew she needed more time and discovery was still open. The Claimant particularly emphasizes that she scheduled depositions for September 15, and 19, 2006; she questions the Defendants' intention in moving for summary decision so quickly on the heels of these depositions because, she contends, the Defendants should have known that she would need those depositions [sic] transcripts in order to make meaningful opposition to any dispositive motion. The Claimant represents that she still did not have the transcripts from these depositions by October 10, 2006.

Facts admitted when a party fails to respond to a request for admissions may serve as the basis for a dispositive motion. *Asea, Inc. v. Southern Pacific Transportation Co.*, 669 F.2d 1242, 1248 (9th Cir. 1981); *Moosman v. Joseph P. Blitz, Inc.*, 358 F.2d 686 (2nd Cir. 1966). In appropriate circumstances, untimely replies may be permitted where the merits of the action would otherwise be subserved, and the party who obtained the admission cannot establish that withdrawing or amending them will prejudice its defense on the merits. FED. R. CIV. P. 36(b); *Sonada v. Cabrera*, 255 F.3d 1035 (9th Cir. 2001) (allowing withdrawal for lack of prejudice); *see also, In re: Heritage Bond Litig.*, 220 F.R.D. 624, 626 (C.D. Cal.

2004) (deeming matters admitted where responses were filed 12 days late, but explaining that a late response should be permitted only when necessary to relieve a party from default by the use of the admissions to obtain a summary or default judgment).

1. Merits of the Claimant's case subserved

The merits are subserved when deemed admissions "practically eliminate[s] any presentation of the merits of the case." *Hadley v. U.S.*, 45 F.3d 1345, 1348 (9th Cir. 1995). The Claimant insists that it would be manifestly unjust to allow the admissions to stand because they establish that the Decedent's death is not covered by the LHWCA or OSCLA. Most of the admissions are dispositive (all but numbers 1 and 6), but holding the Claimant to them is not necessarily unjust, when she had the opportunity to withdraw or amend those admissions for over a year. At the latest, responses to the Defendants' requests for admissions were due on May 7, 2005. Without the opportunity to withdraw or amend, however, the admissions eliminate the need for presentation of the merits because they preclude coverage under either statute. Consequently, I find that the merits would be subserved if the Claimant is relieved from the admissions. That does not end the inquiry, however.

2. Prejudice to the Defendants

The party that obtained the admission has the opportunity to prove how it would be prejudiced

if withdrawal of the admissions were permitted. *Sonada,* 255 F.3d at 1039. Prejudice relates to the difficulty a party may face in proving its case. *Id.*; *see also Hadley,* 45 F.3d at 1349 (finding no prejudice where the moving party would have been able to engage in more extensive trial preparation had the admission been timely). The Defendants assert that the Claimant has failed to respond not only to admissions requests, but also to interrogatories and requests for production of documents. They also argue that some of the Claimant's late answers to the requests for admissions are unreasonable. For example, the Defendants' request number 5 asks the Claimant to admit that the Decedent was not en route to a barge, floating platform, floating island, ship, or other vessel located on the outer continental shelf when he was killed. This is neither vague nor ambiguous, despite the Claimant's objection to the contrary. The parties' lists of undisputed facts both explain that the Decedent was killed by a forklift while attempting to harvest plantains while working on shore. Defendants' Statement of Undisputed Facts (DF) 29; Claimant's Statement of Undisputed Facts (CF) 34. They also agree that workers accessed the offshore platforms from a pier three miles distant from the La Conchita plant. DF 27; CF 20. It makes no sense that the Decedent would have driven the forklift three miles en route to this pier. Therefore, I agree that the Claimant had enough information to admit or deny

this request.[7] This evasive response is prejudicial to the Defendants because it is more difficult to defend against claims when the Claimant keeps the factual basis for them to herself. It also runs counter to the purpose of admissions, which is to narrow the issues for trial. *See Asea,* 669 F.2d at 1248.

The Defendants believe they would prevail on summary judgment even without the deemed admissions. This implies that they will suffer little prejudice if the Claimant were allowed to withdraw and amend her responses. Yet the Defendants' belief in their success does not discount a prejudicial impact on their ability to defend against this claim. When the Defendants filed their motion for summary decision, the Claimant had not responded to any of their discovery requests. She had over a year to answer the requests for admissions, but aside from her response to the Defendants' request number. 6, I still cannot tell what her answers are. The Claimant submitted her objections and answers to the Defendants' requests for admissions as an exhibit to her motion to withdraw or amend, but those answers themselves do not match those listed in the text of the motion.[8]

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[7] The Claimant eventually admitted this request, but she did so in an amended response filed after the Defendant submitted its opposition to her motion to amend or withdraw.

[8] To request for admissions number 1: "The Decedent has no other dependent under the Act than the Claimant," the Claimant answered, "admit," and "admit in part, deny in part. Number 2: "The Decedent was never present on Platform Hogan on the date of death," she answered "unable to admit or deny,"

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She submitted a third, amended set of responses as part of her reply to the Defendants' opposition to her motion to amend or withdraw.[9] I decline to accept this final set as the Claimant's intended responses because no leave had been granted to withdraw or amend the first (and second) set of responses. The Defendants certainly face increased difficulty in preparing their defense when the Claimant has offered

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and "deny." Number. 3: "The Decedent did not do any work on any barges, floating platforms, floating islands, ships, or other type of vessel located on the outer continental shelf on the date of death," she answered, "unable to admit or deny," and "deny." Number. 4: "The Decedent was never present on any barges, floating platforms, floating islands, ships, or other type of vessel located on the outer continental shelf on the date of death," she answered, "unable to admit or deny," and "deny." Number. 5: "The Decedent was not en route to a barge, floating platform, floating island, ship, or other vessel located on the outer continental shelf when he was killed," she answered: "unable to admit or deny," and "deny." Number. 6: "The Decedent was not scheduled to be on Platform Hogan or any other Outer Continental Shelf Lands Act covered site on the date of death," she answered, "deny," and "deny." Number. 7: "The Decedent was not scheduled to be on Platform Hogan or any other Outer Continental Shelf Lands Act covered site on the date of death," she answered, "deny," and "admit in party, deny in part" Number. 8: "The Decedent is not claiming injury under §901 *et seq.* of the Act except as it may have occurred under 43. U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act," she answered, "unable to admit or deny," and "deny."

[9] Although the federal rules require that a party supplement its discovery responses as different information becomes available, the Claimant's responses contained in her reply brief seek to replace, rather than supplement the deemed admissions. *See* Fed. R. Civ. P. 26(e). Therefore, they are not accepted as supplemental answers.

three different answers to one round of requests for admissions, without answering the rest of the Defendants' discovery requests.

The Claimant asserts that the Defendants are not prejudiced by the late responses because they were aware of the factual issues and had complete access to all discoverable evidence. She claims they knew the Decedent worked 98% of his time on the platforms, that his duties included unloading and loading supplies and things off and onto the crew boat he and others used to access Platform Hogan, and that there was no record of his precise duties or locations on the day he died. Therefore, they would have known that the Claimant would deny at least some of the requests for admissions. Regardless of what the Defendants knew of the Decedent's daily activities, litigation remains an adversary system. It is inappropriate to expect the Defendants to concede a denial to any of their own requests for admissions by anticipating the Claimant's response. Were that so, admission requests would lose much of their value. It is the Claimant's duty to answer the requests, not the Defendants' responsibility to anticipate (or guess about) the answers.

Although it would be unreasonable to hold the Claimant's new counsel to answer for all of the Defendants' discovery requests shortly after accepting the case, that was not required of him. The Claimant waited to seek relief from the deemed admissions until after the Defendants had submitted their summary judgment motion. It does not matter that

discovery was still ongoing or that there had been multiple continuances.

Allowing the deemed admissions to stand is somewhat harsh, but in this case it is appropriate in light of the Claimant's failure to withdraw them as soon as she discovered that they were late. *See U.S. v. Kasuboski*, 834 F.2d 1345, 1350 (7th Cir. 1987) (explaining that the harshness of maintaining deemed admissions is tempered by the availability of the motion to withdraw, a procedure that the admitting party had failed to employ). Moreover, this result does not disturb the Claimant's entitlement to a remedy under state law; the Defendants paid workers' compensation benefits at $807.69 per week for 52 weeks after the Decedent's death. Declaration of Michael Thomas in Support of Summary Decision (Dec. Thomas 2) Exh. 11. Therefore, I find that the Claimant's confusing, evasive, and late answers have prejudiced the Defendants' ability to defend against this claim, and deny the Claimant's motion to withdraw and amend.

B. Defendants' Motion to Strike the Claimant's Reply Brief.

No reply to an answer, response to a reply, or any further responsive document, shall be filed unless the presiding judge permits it. 29 C.F.R. § 18.6(b) (2006). The Claimant did not request leave to file a reply. The Defendants argue that this procedural misstep means I should not consider the reply brief. They also argue

that it should not be considered because the Claimant filed it 41 days after they served their opposition[10] and because it introduces new factual and legal issues, which cannot be done in a reply. *See Lujan v. National Wildlife Federation*, 497 U.S. 871, 894-95 (1990) (explaining that it is improper to introduce new facts or different legal arguments in a reply brief).

A court must give the opposing party the opportunity to respond to a reply brief if it relies upon new material in the brief. *Beaird v. Seagate Tech. Inc.*, 145 F.3d 1159, 1164-65 (10th Cir. 1998). The Claimant made the following four new arguments in her reply that do not appear in her initial request to withdraw or amend: 1) the responses are timely; 2) she never refused to respond; 3) she was granted an extension to respond to the requests for admissions by virtue of her multiple requests to continue the trial; and 4) she was compelled to prematurely respond to the requests for admissions because she had not received some of the Decedent's timesheets or transcripts from depositions that were taken in September of 2006. The Claimant raised these arguments because the Defendants asserted in opposition that her answers were untimely and failed to explain why she had not responded earlier.

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[10] Generally, responses to motions and replies are due within ten days after the initial motion or opposition was served. 29 C.F.R. § 18.6(b) (2006).

Denying the Claimant the opportunity to counter the Defendants' opposition brief, especially in light of the pending summary decision motion, would interfere with the Claimant's right to address important defense arguments. *See El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032, 1040 (9th Cir. 2003) (finding that the district court did not abuse its discretion when it entertained an argument raised for the first time in the reply brief). Therefore, the Claimant's peccadillo of failing to request leave before submitting a reply is excused.

The Defendants addressed the Claimant's fourth argument in their motion to strike, explaining that 591 days had passed between the service of the requests for admissions and the Claimant's motion to withdraw or amend. Even with two extensions to respond granted to the Claimant's prior attorney, these admissions were late as of May 8, 2005. A party rarely has access to all discovery before it answers requests for admissions. That is precisely why the federal rules provide an option to respond "unable to admit or deny," while they also impose a duty to supplement discovery responses. *See* Fed. R. Civ. P. 26(e), 36(a)(4). The Claimant attempted to answer the requests for admissions much too late. Therefore, I agree with the Defendants that the Claimant was not compelled to respond prematurely.

None of the Claimant's other arguments alter the fact that her responses to the requests for admissions were well over a year late. Neither the change in counsel nor the requests for continuance has any

affect on the timeliness of the responses. None of the exhibits attached to the Claimant's reply brief show that the parties agreed to restart the clock on the requests for admissions. They show only that the Claimant's new counsel was aware that he would need more time to complete discovery and prepare for the hearing. There was no motion to withdraw until October 9, 2006, nearly one month after the Claimant's new counsel acknowledged that responses to discovery were late. The Claimant has not argued that she qualifies for equitable tolling. That she never "refused" to respond does not count as a timely response, and there is no evidence that an extension to respond to the requests for admissions, except for the first two extending the deadline to May 7, 2005, was requested. Indeed, it would have done no good to request one after this deadline had passed, when the remedy for late responses is to request to withdraw or amend the admissions made by operation of law. Therefore, I deny the Defendants' motion to strike, but allow the deemed admissions to stand because the arguments in the Claimant's reply brief do not persuade me to alter that result.

C. Legal Standard for Granting Summary Judgment

A summary decision may be entered if the pleadings, affidavits, and other evidence show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. 29 C.F.R. § 18.40(d); *Friday v. Northwest Airlines, Inc.*,

2005 WL 1827745 *2, ARB no. 03-132, ALJ No. 2003 AIR 19 (July 29, 2005) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986)). The rule on summary decisions mirrors Rule 56 of the Federal Rules of Civil Procedure. *Mehen v. Delta Air Lines*, Case No. 03-070 (ARB Feb. 24, 2005).

The proof must be grounded in affidavits, declarations, and answers to discovery from the complainant and (or) other witnesses. 29 C.F.R. § 18.40(d) (2006). Affidavits must be made on personal knowledge, setting forth facts that would be admissible in evidence and show affirmatively that the witness is competent to testify to the matters stated. 29 C.F.R. § 18.40(c) and Fed. R. Civ. P. 56(e). The judge weighs none of this evidence, and indulges reasonable inferences in the claimant's favor. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The burden first is on the moving party to explain why there is no genuine issue of material fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see also Matsushita*, 475 U.S. at 587 (finding no genuine issue for trial when the record as a whole could not lead a trier of fact to find for the non-moving party). Once this burden has been met, the "adverse party must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 250. The non-moving party cannot rest upon "mere allegations, speculation, or denials of the moving party's pleadings, but must set forth specific facts on each issue upon which he would bear the

ultimate burden of proof." *Id.* at 256. If the non-moving party fails to establish an element essential to his case, there can be "no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Celotex*, 477 U.S. at 322-23.

The Defendants argue that the Claimant's admissions establish that the Decedent is not covered by either the LHWCA or the OCSLA because he was not a maritime employee and was not working on an outer continental shelf when he died. Moreover, they insist that even if the Claimant had denied the requests for admissions, she cannot show by sufficient evidence that the Decedent's death is covered by either statute. The Claimant counters that the Decedent loaded and unloaded supplies onto a crew boat, which should qualify as maritime work. She contends that he spent a majority of his time on platform Hogan, and therefore his death on an onshore location that served the offshore oil drilling business should be covered under the OCSLA. She also attacks the Defendants' motion as procedurally defective, but I find this last argument unpersuasive.

Although the deemed admissions are enough to find in the Defendants' favor, in the alternative it is undisputed that the Defendants conducted an offshore drilling business. Offshore drilling and any task essential to it is not maritime employment for purposes of the LHWCA. *Herb's Welding, Inc., v. Gray*, 470 U.S. 414, 422 (1985). Therefore, unloading and

loading a supply boat intended to support the offshore drilling business does not qualify as maritime employment. Likewise, the undisputed location of the Decedent's death does not satisfy the narrow situs requirement of the OCSLA. Consequently, the Claimant cannot establish coverage, an essential element to her case. There is no genuine issue of material fact that could overcome the Defendants' motion for summary decision.

1. Technical Defects of Motion

The Claimant argues that the summary decision motion fails to comply with 29 C.F.R. § 18.6(a) and (b), which require that applications for an order must be made by motion and all parties must have a reasonable opportunity to state an objection, and that an answer in opposition to a motion is due within 10 days after the motion is served. The Claimant's counsel argues that he could not prepare a meaningful answer to the Defendants' summary decision motion before deposition transcripts became available. Whether the Claimant had all of the evidence sought in her possession has nothing to do with these requirements. Moreover, these depositions were conducted by the Claimant's counsel. If he had wanted expedited transcripts then he could have asked for them, and if he needed an extension to respond to this motion for summary decision then he could have made this request before the answer was due. The Defendants filed a motion for summary decision, to

which the Claimant had a reasonable opportunity to answer. Therefore, the Defendants satisfied the regulations.

The Claimant also alleges that the motion is deficient under 29 C.F.R. §18.7(a), (b)(2), and (b)(7). Section 7(a) and b(2) state that an administrative law judge may order a party to file a pre-hearing statement, which includes stipulated facts and a statement that the parties have conferred in attempt to reach stipulation. This places no restrictions on when a motion for summary decision may be filed, so the Defendants' motion is not deficient on that basis. Section 7(b)(7) requires that the parties give suggested hearing times and locations for the presentation of their cases. Again, this is inapplicable to a motion for summary decision, for which no hearing is required. *See* 29 C.F.R. § 18.6(c) (No oral argument will be heard on motions unless the administrative law judge otherwise directs.) Therefore, I find that the motion for summary decision is proper.

2. Deemed Admissions form a proper basis for summary decision

Any matter admitted is conclusively established unless the court permits withdrawal or amendment. Fed. R. Civ. P. 36(b); 29 C.F.R. § 18.20(e). Admissions made under Rule 36, even default admissions, can serve as the factual predicate for summary judgment. *Kasuboski,* 834 F.2d at 1350; *see also In re Carney,* 258 F.3d 415, 421 (5th Cir. 2001) (explaining that

failure to timely respond to requests for admission can prevent a party from contesting the merits of the case); *Kathryn Cook v. Allstate Ins. Co.*, 337 F. Supp.2d 1206 (C.D. CA 2004). Here, the Defendants moved for summary judgment prior to the Claimant's motion to withdraw or amend the deemed admissions. Where there has been no previous motion to withdraw or amend deemed admissions, a party may not oppose summary judgment by revisiting issues determined by the deemed admissions. *Tillamook Country Smoker, Inc. v. Tillamook County Creamery Association,* 333 F. Supp.2d 975, 984 (D. Or. 2004). The deemed admissions will stand because to allow the Claimant to withdraw or amend them would prejudice the Defendants. The Claimant may not claim coverage under the LHWCA or the OSCLA because the admissions establish that the Decedent was not a maritime worker and his death did not occur on an outer continental shelf. Therefore, it is proper to grant summary decision based on the Claimant's admissions.

3. Coverage under the LHWCA

The Longshore Act provides compensation to certain employees engaged in maritime employment for occupational diseases or unintentional work-related injuries, irrespective of fault, occurring on the navigable waterways of the United States or certain adjoining areas, resulting in disability. *See* 33 U.S.C.A. §§ 901, *et seq.* To be eligible for compensation, a person must be an employee (status) as

defined by § 902(3) who sustains injury in a place (situs) defined by § 903(a). *P.C. Pfieffer Co., Inc., v. Ford,* 444 U.S. 69, 74 (1979). For a claim to succeed both the situs and status requirements must be satisfied. *Herb's Welding,* 470 U.S. at 415-16; *Brady-Hamilton Stevedore Co., v. Herron,* 568 F.2d 137, 140 (9th Cir. 1978).

a. *Status*

To qualify for benefits under the LHWCA a worker must engage in maritime employment. 33 U.S.C.A. § 903 (West 2007). Maritime employment requires that workers spend "at least some of their time in indisputably longshoring operations." *Northeast Marine Terminal Co. v. Caputo,* 432 U.S. 249 (1977). Any worker who moves cargo between ship and land transportation qualifies as a maritime employee. *P.C. Pfeiffer,* 444 U.S. at 82-84 (covering workers who did tasks "traditionally" performed by longshoremen); *Chesapeake & Ohio R.R. v. Schwalb,* 493 U.S. 40, 45 (1989) (explaining it is "clearly decided that, aside from the specified occupations, land-based activity occurring within the § 903 situs will be deemed maritime only if it is an integral or essential part of loading or unloading a vessel"). Rather than focus on the particular task at the time of injury, a worker's status turns on the nature of work that he or she may be assigned to do. *P.C. Pfeiffer,* 444 U.S. at 81-82; *see also Schwabenland v. Sanger Boats,* 683 F.2d 309, 312 (9th Cir. 1982) (finding that inspection, testing of new models, and occasional maintenance of

recreational small boats is sufficiently related to the construction of the vessels to constitute maritime employment, even though these duties were not a substantial portion of the employee's overall working time).

The Claimant insists that the Decedent was a maritime employee because "a few times" he assisted the platform crane operators by putting supplies into baskets to be loaded onto the crew boat.[11] Deposition of Jose Rosales (Depo. Rosales) at 20-21. This crew boat is used to take personnel to and from platforms to the shore, and also for delivering supplies, pipe, or equipment to and from the platforms. Deposition of Gordon "Scoop" Boswell[12] (Depo. Boswell) at 27. Mr. Boswell did not know whether the Decedent ever put supplies on the crew boat, but he admitted that it was possible. *Id.* at 29.

At La Conchita, he operated a forklift, loaded and unloaded trucks, moved, staged and marshaled worn out equipment, valves, and other scrap metal. Depo. Magill at 30-31. The Claimant argues that the Decedent was performing maritime duties at the time of

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[11] Jose Rosales, a coworker, testified that the Decedent brought materials to the pier once a week, but he did not put them on the crew boat. Depo. Rosales at 17-18. Mr. Rosales's deposition appears as Exh 15 in support of the Declaration of Timothy K. Sprinkles (Dec. Sprinkles) in Opposition to Motion for Summary Decision.

[12] This deposition appears as Exh. 2 in support of Dec. Sprinkles.

his death because he was operating a forklift while engaged in the "intermediate steps" of moving scrap metal between the Defendants' ship and scrap metal dealers. *See id.* at 33. At the time he died, however, he was harvesting plantains, not moving scrap metal.

The Defendants assert that whatever material the Decedent might have moved onto or off of a crew boat was incidental to the offshore drilling business, rather than linked to longshore work. His primary duties on the platforms, they say, involved maintenance, painting, cleaning oil spills, fixing leaks and repairing valves. Although they agree that the Decedent spent approximately 5% of his time loading and unloading supplies onto and off of the crew boat, they emphasize that the Casitas Pass Pier is owned by a different company, Venoco Oil Company. Depo. Magill at 13. The Venoco pier operators would crane-lift scrap and equipment from the crew boat, onto a truck.[13] *Id.* at 32.

Chris Magill, one of the Decedent's former supervisors, testified that the crew boat made two trips daily to the platforms, carrying cargo, equipment, tools, and parts, and that Venoco has two crew members that do all the loading and off-loading of equipment. Depo. Magill at 14, 44. He said that when pipe and equipment came from other vendors, the "guys that operate the pier" would do all the unloading,

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[13] This deposition appears as Exh 14 in support of Dec. Sprinkles.

staging, and loading onto the boat. *Id.* at 21. "A few times" the Decedent might have assisted in chocking a load of pipe which was to be loaded onto the crew boat at the pier by the Venoco crew. *Id.* at 20. It was not the Decedent's normal job to assist in rigging pipe out on the platforms; he did it only once a month. *Id.* at 20-21. There was a rigging crew assisted by the Venoco boat crew that handled most the cargo. *Id.* at 44.

Where loading and unloading of equipment is incidental to an employee's primary role in support of oil and gas production, he does not qualify for coverage under the LHWCA. *See Herb's Welding*, 470 U.S. at 423 (explaining that the Claimant's primary welding work was far removed from traditional LHWCA activities, notwithstanding the fact that he unloaded his own gear upon arriving at the platform by boat); *Munguia v. Director O.W.C.P.*, 999 F.2d 808, 812-13 (5th Cir. 1993) (holding that a roustabout/relief pumper-gauger lacked maritime status under the LHWCA, because he loaded and unloaded tools and supplies for the non-maritime purpose of servicing fixed platforms); *Alexander v. Hudson Engineering Co*, 18 BRBS 78 (1986) (finding no longshore status where onshore loading duties were incidental to the claimant's primary role as an electrician in the fabrication and outfitting of fixed offshore oil production facilities). *But cf., Maher v. Director, O.W.C.P.*, 330 F.3d 162, 167 (3rd Cir. 2003) (establishing status under the LHWCA where the employee worked 50%

of his time as a checker directly involved in loading and unloading functions).

It is immaterial whether the Decedent or Venoco's crew members loaded or unloaded scrap metal on and off of the crew boat. Even assuming that the Decedent occasionally performed this task does not amount to substantial evidence that he worked in maritime employment because the Defendants conduct an oil exploration and extraction business. There is no evidence his duties were for any purpose other than to support this non-maritime operation. Whatever loading and unloading the Decedent did was incidental to his primary role as a roustabout on the offshore platforms and the La Conchita site. *See McGray v. Director, O.W.C.P.*, 181 F.3d 1008, 1015 (9th Cir. 1999) ("So in the statutory context, the phrase 'engaged in maritime employment' means that an employer hired the individual to perform maritime work in this particular contract of employment."). Likewise, there is no evidence that the scrap metal that the Decedent marshaled around La Conchita was for the purpose of maritime commerce of any kind, especially because of the nature of the Defendants' oil operation. *See Cappelluti v. Sea-Land Service, Inc.*, 10 BRBS 1024 (BRB) (1979) (concluding that the claimant did not engage in maritime employment where he cut up damaged containers that were set aside for salvage and no longer involved in maritime commerce); *Scala v. Island City Iron and Supply, Inc.*,. 9 BRBS 6000 (BRB) (1979) (finding no maritime employment where employee cut up rusty

iron from the dry dock for his employer in the scrap metal business). The Claimant provides no proof to support that the Decedent used a forklift to move scrap metal off of the supply boat; instead, the evidence shows that he used it to move scrap that had already been transported from the pier to the plant. This is not enough to connect him to maritime employment. Therefore, the Claimant cannot satisfy the status requirement based on the Decedent's primary duties, which supported an oil and gas exploration business.

The Claimant nonetheless insists that the Decedent should be covered by the LHWCA because the Defendants qualify as a maritime employer. A maritime employer is one whose employees conduct maritime employment. 33 U.S.C.A. § 902(4) (West 2007). The work must be done "upon the navigable waters of the United States, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel." *Id.* The Claimant argues that the Employer is a maritime employer within the meaning of the LHWCA because it has an onshore facility and storage yard located 250-300 feet from the Pacific Ocean, and because workers took a boat twice daily from the Casitas Pass Pier to the offshore platforms. CF 19-21.

Viewing the evidence in light most favorable to the Claimant, it does not suggest that the Decedent worked for a maritime employer. An employer's

operations on offshore drilling platforms do not call for loading, unloading, repairing or building a vessel; rather, a pipeline serves as the relevant conduit between the platform and the shore. The operations at La Conchita did not involve loading or unloading onto or off of a marine vessel, ship repair or breaking. Dec. Alberts.

Moreover, the Claimant argues, "[b]ut for the Defendant's OCS oil and gas exploration, development, extraction, and transmission business, Defendant would not have owned and operated the La Conchita facility and storage yard." Claimant's Opposition at p. 37. If La Conchita existed because of oil and gas business, then the Supreme Court instructs that it is not maritime. *See Herb's Welding,* 470 U.S. at 422. In *Herb's Welding,* the Court explained that drilling platforms were "not even suggestive of traditional maritime affairs" and that "[t]he history of the Lands Act at the very least forecloses the . . . holding that offshore drilling is a maritime activity and that any task essential thereto is maritime employment for LHWCA purposes." *Id.* By linking La Conchita inextricably to oil and gas exploration, development, extraction, and transmission, the Claimant defeats her own argument that the Decedent performed maritime work for a maritime employer.

Consequently, I find that the Claimant failed to establish that either the Decedent was a maritime employee, or the Defendants maritime employers. Therefore, there is no genuine issue as to any material fact concerning status under the LHWCA.

b. *Situs*

In order to satisfy the situs test, the Decedent's death must have occurred upon the navigable waters of the United States, which is defined under the LHWCA to include any "adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel." 33 U.S.C.A § 903(a). *See McGray,* 181 F.3d at 1010 (expanding situs to include a pier that was not used to dock ships). Employees who are on the situs but not engaged in the overall process of loading or unloading vessels are not covered. *Caputo,* 432 U.S. at 267. Here, the Claimant did not establish that the Decedent engaged in maritime employment. Consequently, the site of his injury has no bearing on the question of coverage.

Even if he were a maritime worker, the Claimant would have to show by substantial evidence that La Conchita qualifies as an adjoining area customarily used to load and unload a vessel. *Caputo,* 432 U.S. 263-64. Coverage under Section 3(a) is determined by the nature of the place of work at the moment of injury. *Griffin v. McLean Contracting Co.,* 30 BRBS 221 (ALJ) (1996). To determine whether a site is an "adjoining area," the Ninth Circuit[14] considers the following factors: 1) the particular suitability of the

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[14] The Claimant argues that the circuit courts are split on how to define an adjoining area under the LHWCA. While the Third and Fifth Circuits analyze this issue slightly differently than the Ninth Circuit, their decisions have no bearing on this case, for binding Ninth Circuit precedent exists.

site for maritime use; 2) whether adjoining properties are devoted primarily to maritime commerce; 3) the proximity of the site to the waterway; and 4) whether the site is as close to the waterway as is feasible given all the circumstances in the case. *Brady-Hamilton Stevedore Co. v. Herron,* 568 F.2d 137, 141 (9th Cir. 1978).

Here, La Conchita is not particularly suited for maritime use because it is not over or contiguous with any body of water and does not possess any area to unload materials from a dock, barge, floating platform or island, ship or other type of vessel. Dec. Alberts. It does not possess any adjoining pier, or any other area used for loading, unloading, repairing, dismantling, or building of any vessel. *Id.* Therefore, the first factor weighs against finding that La Conchita qualifies as a proper situs under the LHWCA

There are no businesses engaged in shipping operations or other maritime activities within at least a one-mile radius of the La Conchita plant. Dec. Alberts. The Casitas Pass Pier is three miles away, but the Claimant provides no evidence that boats other than the crew boat used to ferry back and forth to the platforms use it. Consequently, this second factor also weighs against the Claimant.

The Claimant argues that the proximity of the plant to the ocean – 250-300 feet – lends itself to maritime employment. Nonetheless, it is undisputed that La Conchita is separated from the Pacific Ocean

by railroad tracks, a highway and a beach. DF 32. The plant processes oil delivered from the ground under the platforms via pipeline, not boat. Therefore, the proximity to the ocean is conducive to oil exploration and extraction, but not loading or unloading vessels, ship building or breaking because there is no way to cross from the plant to the ocean without dodging trains and highway traffic. Therefore, factors three and four tip in favor of the Defendants and I find that the Claimant cannot show by substantial evidence that La Conchita is an adjoining area under the LHWCA.

c. *Missing Time Sheets*

Although neither party disputes the location of the Decedent's death, the Claimant protests that it is uncertain whether the Decedent was scheduled to work at La Conchita during the week before his demise. The Claimant explains that she received the Decedent's time cards from April 1, 2004 through May 31, 2004, and his daily journal of work activities from May 5, 2004 through June 5, 2004. Declaration of Timothy K. Sprinkles in Support of Supplemental Opposition to Motion for Summary Decision (Dec. Sprinkles). She says they do not show that he was at La Conchita from May 22, 2004 through May 31, 2004. The Claimant also questions where the Decedent worked on June 1 and 2, 2004, because, she alleges, the Defendants had not produced time sheets for that period. The Claimant believes the Defendants have these missing timesheets and personnel records

that "have a substantial likelihood" of showing the precise locations where the Decedent worked, his specific job duties, and the names of supervisors, which would be material to the status and situs issues. She underscores this belief with testimony from Mr. Boswell, who said he did not know if the Decedent left La Conchita on the date of his death, and from Mr. Magill, who testified that the Decedent may have returned to the platforms to get some equipment. *See* Depo. Boswell at 39; Depo. Magill at 52.

The time sheets record two-week periods; the last covers May 16, 2004 through May 31, 2004. Dec. Sprinkles, Exh 1. Under the heading "work performed," it says "work on La Conchita plant painting." In the time slot underneath May 31, it reads "Hogan Day." The hours worked per day are listed under each date. There is an "X" underneath the days corresponding to May 16, and 22-30, rather than hours, suggesting that the Decedent did not work during those days.[15]

The Defendants explain that they produced the requested timesheets. They say there were no time sheets for June 1 and 2, 2004 because the Decedent maintained his own time sheets, kept them in his possession, and would submit them to his employer

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[15] This corresponds to the total hours submitted for the two-week period: 72. There are 12 hours listed under May 17, 18, 19, 20, 21, and 31. (6*12=72).

every two weeks. *See* Depo. Magill at 42; Depo. Rosales at 27. Thus, he would not have submitted his time for June 1 and 2 until June 15, 2004, but he died before he could do so. Based on the deposition testimony that supports these facts, there is no reason to believe there were timesheets for June 1 and 2, 2004 for the Defendants to withhold.

Moreover, I find that the absence of timesheets for June 1 and 2, 2004 does not create a dispute of material fact because the parties agree on the place of death. Although it appears that the Decedent worked on platform Hogan on May 31, 2004, and it is possible that he could have returned to the platform on the day of his death, the place of injury (or death) controls the question of situs under the LHWCA. *See Griffin*, 30 BRBS 221. It does not matter if before his death he went out to the pier, the crew boat, or any other place that might have qualified under the Longshore Act. It is undisputed that he died 10 feet off of one of La Conchita's service roads, which do not qualify as adjoining areas. Therefore, the absence of time sheets covering the last two days of the Decedent's life do not evoke the possibility that the place of his death could have been somewhere the statute covers.

4. Coverage under the OCSLA

The OSCLA extends the benefits of the Longshore Act to employees injured or killed as the result of operations conducted on the outer continental shelf

for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer continental shelf. 43 U.S.C.A. § 1333(b), (c) (West 2007). It provides "an essentially non-maritime remedy" and controls only on "the subsoil and seabed of the outer continental shelf, and artificial islands and fixed structures" upon it. 43 U.S.C.A. § 1333(a)(2)(A) (West 2007); *Offshore Logistics v. Tallentire,* 477 U.S. 207, 217 (1986). The coverage provisions of OCSLA are separate from and are not related to the coverage requirements of the LHWCA. *Robarge v. Kaiser Steel Corporation,* 17 BRBS 213 (1985), *aff'd sub nom., Kaiser Steel Corp. v. Director, OWCP,* 812 F.2d 518 (9th Cir. 1987).

a. *Status*

The OSCLA confers status broadly, excluding only those employees who are "a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof" 43 U.S.C.A. § 1333(b)(1) (West 2007). This section extends the Longshore Act to all victims of disabling or fatal injuries sustained while working to develop the mineral wealth of the outer continental shelf. *Kaiser Steel Corp,* 812 F.2d at 522 (covering a welder injured during construction of an offshore oil platform located on the outer continental shelf). There is no dispute that the Decedent has status

under this statute because of his duties on platform Hogan.

b. *Situs*

The parties dispute whether the OCSLA contains a situs requirement. In *Herb's Welding,* the Supreme Court recognized that the BRB had found that a claimant, who was injured while welding a gas flow line on a fixed platform located in Louisiana waters, could recover under the OCSLA despite the location of his injury away from the outer continental shelf because the injury occurred as the claimant performed work "integrally related" to operations on the outer continental shelf. 470 U.S. 418 & n. 12. Nonetheless, the Court declined to review the question of a situs requirement under the OCSLA because it had not been fully briefed and was not discussed by the appellate forum. *Id.*

One year later, the Supreme Court decided *Offshore Logistics v. Tallentire,* 477 U.S. 207, 219 (1986). The Court held that two offshore platform workers who died when a helicopter carrying them from the platform crashed 30 miles off of the Louisiana coast were not covered by the OCSLA because the accident did not arise on the subsoil and seabed of the outer continental shelf, or the artificial islands and structures erected thereon. *Id.* at 217. The crash occurred on the high seas, so the Death on the High Seas Act (46 U.S.C.A. §§ 761, 767) applied. The Court did not extend coverage to the platform workers

because they were killed miles away from the platform, explaining that, "Congress determined that the general scope of OCSLA's coverage . . . would be determined principally by locale, not by the status of the individual injured or killed." *Id.* at 218.

Dicta in the Ninth Circuit's decision in *A-Z International v. Phillips*, 179 F.3d 1187 (9th Cir. 1999), an appeal that involved whether the claimant had filed a fraudulent claim for benefits, refers to a situs requirement.[16] Although the court did not review the ALJ's denial of benefits on grounds that the claimant was not injured on the offshore platform, it cited to *Offshore Logistics* and mentioned that "[t]he situs requirement is a predicate for coverage under the OCSLA." *Id. at* 1189 & n.1.

The Claimant argues that *Offshore Logistics is* not binding precedent because it concerned a helicopter crash over the high seas and does not state

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[16] In an earlier case, *Kaiser v. Director, O.W.C.P.*, 812 F.2d 518 (9th Cir. 1987), the court upheld benefits for an employee injured while on the outer continental shelf but during the construction of an offshore oil platform, before any oil or gas had been extracted from the earth. Although there was no question of extending coverage to workers injured off of the outer continental shelf, the court concluded that "section 1333(b) should be construed as extending coverage to all victims of disabling or fatal injuries sustained while working to develop the mineral wealth of the outer continental shelf." *Id.* at 522. This case avoids the issue of situs, however, and this broad statement was rejected in later case *A-Z International* when the court recognized a situs requirement.

definitively whether the OSCLA covers only those who are hurt on the outer continental shelf. Likewise, she challenges the authority of *A-Z International* because no issue of situs was raised during that appeal. Instead, she focuses on the vast majority of time the Decedent spent working on the platforms (98% of his work time), instead of on the place of his death, and urges application of either Third or Fifth Circuit precedent.

The Third Circuit does not recognize a situs requirement, therefore an injury on land can result in coverage under the OSCLA. *See Curtis v. Schlumberger Offshore Service, Inc.*, 849 F.2d 805, 809 (3rd Cir. 1988) (interpreting the statute to contain no geographic restrictions and covering any injury occurring as the result of oil-drilling operations). By this standard, the Claimant would likely be entitled to benefits, despite his death on shore, because it is undisputed that the work he performed at La Conchita supported the offshore drilling business. The problem is that the *Curtis* case appears to be the outlier result of recent cases that analyze coverage under the OCSLA, including an administrative proceeding within the Ninth Circuit. *See Morrison v. Pool California Energy Services, et. al.*, 36 BRBS 223 (ALJ) (2002) (rejecting the Third Circuit's decision in *Curtis* and opining that the employer was "probably correct in contending that there is a 'situs' requirement in the OCSLA").

The Claimant's reliance on Fifth Circuit authority is misplaced. Although she contends that the Fifth

Circuit has left the issue of situs "open to interpretation," *Mills v. Director, O.W.C.P.*, 877 F.2d 356, 359 (5th Cir. 1989), this is not correct. In *Mills*, the court took the opportunity to fill the gap in the statutory language and legislative history by interpreting Section 1333(b) to require that coverage extend to employees who "suffer injury or death on an OCS platform or the waters above the OCS." *Id.* at 359. It declined to extend benefits to workers injured off of the outer continental shelf, explaining, "[g]iven that Congress intended to establish a bright-line geographical boundary for § 1333(b) coverage, we now draw that line." *Id.* at 362.

She also cites to *Stansbury v. Sikorski Aircraft*, 681 F.2d 948, 950-51 (5th Cir. 1982), as authority that the OCSLA applies to injuries occurring without regard for situs. However, the circuit court explained in the *Mills* decision that it did not interpret *Stansbury* to read Section 1333(b) as extending longshore benefits to oilfield workers injured on land or state territorial waters. *Mills*, 877 F.2d at 361-62. The holding in *Mills* was reinforced in *Demette v. Falcon Drilling Co.*, 280 F.3d 492, 498 (5th Cir. 2002), which concludes that the Supreme Court and Fifth Circuit have held that Section 1333(a)(1) creates a situs requirement, and in *Diamond Offshore Co. v. A&B Builders*, 302 F.3d 531, 541-42 (5th Cir. 2002), in which the court enumerated three locations that satisfy the situs requirement of Section 1333(a)(1):

1) the subsoil and seabed of the OCS;

2) any artificial island, installation or other device if (a) it is permanently or temporarily attached to the seabed of the OCS, and (b) it has been erected on the seabed of the OCS, and (c) its presence on the OCS is to explore for develop, or produce resources from the OCS;

3) any artificial island, installation, or other device if (a) it is permanently or temporarily attached to the seabed of the OCS, and (b) it is not a ship or vessel, and (c) its presence on the OCS is to transport resources from the OCS.

On balance I find that the Fifth Circuit cases follow the Supreme Court's interpretation of the OCSLA as including a narrow situs requirement. Although the Ninth Circuit may not have analyzed the issue of situs directly, mention of situs as "predicate for coverage" gives a strong indication that it would align with the Fifth Circuit, rather than the Third Circuit, when the issue arises. Therefore, I find that Fifth Circuit precedent, as it adopts the narrow Supreme Court interpretation of situs in *Offshore Logistics,* is the most persuasive. In order to be covered by the OCSLA, an employee must have suffered an injury on the subsoil and seabed of the outer continental shelf, or the artificial islands and structures erected thereon the waters above it.

The parties agree that the Decedent was killed while harvesting plantains at an onshore facility that

served offshore oil platforms. This location does not satisfy the situs requirement of the OCSLA. Therefore, the Claimant is not entitled to benefits under this statute.

V. Conclusion

The Claimant's motion to withdraw or amend is denied because it would prejudice the Defendants' ability to defend against this claim. The Defendants' motion to strike is also denied to give the Claimant the opportunity to counter all of the defense arguments opposing the motion to withdraw or amend. The Claimant has failed to submit any evidence raising a triable issue of fact that her claim falls under the jurisdiction of either the LHWCA or the OCSLA. Therefore, I grant summary decision in the Defendants' favor, and dismiss this claim.

A

William Dorsey
Administrative Law Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LUISA VALLADOLID, Petitioner, v. PACIFIC OPERATIONS OFF-SHORE, LLP; INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA; and DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Respondents	No. 08-73862 BRB No. 07-965 ORDER DENYING PETITION FOR REHEARING EN BANC (Filed Jul. 19, 2010)

Before: REINHARDT and BYBEE, Circuit Judges, and SELNA,* District Judge.

Judges Reinhardt and Bybee have voted to deny rehearing en banc, and Judge Selna recommends denial of rehearing en banc. The full court has been advised of the Respondents' petition for rehearing en banc, filed June 3, 2010, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R.

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* The Honorable James V. Selna, United States District Judge for the Central District of California, sitting by designation.

App. P. 35. The petition is DENIED. No further petitions shall be entertained.

33 U.S.C. section 903(a) provides:

(a) Disability or death; injuries occurring upon navigable waters of United States

Except as otherwise provided in this section, compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

43 U.S.C. section 1301(a), (b) & (c) provides:

When used in this subchapter subchapter and subchapter II of this chapter –

(a) The term "lands beneath navigable waters" means –

> **(1)** all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;
>
> **(2)** all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and
>
> **(3)** all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union,

or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 1312 of this title but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico, except that any boundary between a State and the United States under this subchapter or subchapter II of this chapter which has been or is hereafter fixed by coordinates under a final decree of the United States Supreme Court shall remain immobilized at the coordinates provided under such decree and shall not be ambulatory;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

* * *

43 U.S.C. section 1312 provides:

The seaward boundary of each original coastal State is approved and confirmed as a line three geograph ical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

43 U.S.C. section 1331(a) provides:

When used in this subchapter –

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

* * *

43 U.S.C. section 1332 provides in pertinent part:

It is hereby declared to be the policy of the United States that –

> (1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter;
>
> (2) this subchapter shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;
>
> * * *

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43 U.S.C. section 1333 provides:

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2)(A) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its

boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after September 18, 1978, the President shall establish procedures for setting any outstanding international boundary dispute respecting the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) Longshore and Harbor Workers' Compensation Act applicable; definitions

With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions

of the Longshore and Harbor Workers' Compensation Act [33 U.S.C.A. § 901 et seq.]. For the purposes of the extension of the provisions of the Longshore and Harbor Workers' Compensation Act under this section –

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(c) National Labor Relations Act applicable

For the purposes of the National Labor Relations Act, as amended [29 U.S.C.A. § 151 et seq.], any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the

State nearest the place of location of such artificial island, installation, or other device.

(d) Coast Guard regulations; marking of artificial islands, installations, and other devices; failure of owner suitably to mark according to regulations

(1) The Secretary of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary.

(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) of this section whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this subchapter, and the owner shall pay the cost of such marking.

(e) Authority of Secretary of the Army to prevent obstruction to navigation

The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to the artificial islands,

installations, and other devices referred to in subsection (a) of this section.

(f) Provisions as nonexclusive

The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

OPPOSITION BRIEF

No. 10-507

In the Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP, ET AL., PETITIONERS

v.

LUISA L. VALLADOLID, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Section 4(b) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1333(b), extends workers' compensation coverage under the Longshore and Harbor Workers' Compensation Act (Longshore Act), 33 U.S.C. 901 *et seq.*, "with respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources * * * of the outer Continental Shelf." The question presented is whether the OCSLA extends Longshore Act coverage only to workers injured on the outer Continental Shelf itself.

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BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-34) is reported at 604 F.3d 1126. The decision and order of the Benefits Review Board of the United States Department of Labor (Pet. App. 35-52) is reported at 42 Ben. Rev. Bd. Serv. (MB) 67. The decision and order of the administrative law judge (Pet. App. 53-93) is reported at 41 Ben. Rev. Bd. Serv. (MB) 795.

JURISDICTION

The judgment of the court of appeals was entered on May 13, 2010. A petition for rehearing en banc was denied on July 19, 2010 (Pet. App. 94-95). The petition for a writ of certiorari was filed on October 13, 2010. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331-1356a, and the Submerged Lands Act, 43 U.S.C. 1301-1315, were enacted in 1953 to provide "for the orderly development of offshore resources" in the wake of a series of decisions of this Court clarifying the federal government's paramount authority over the seabed, including those portions formerly claimed by certain coastal States. *United States* v. *Maine*, 420 U.S. 515, 527 (1975). In general, the Submerged Lands Act extended the boundaries of coastal States to include the seabed within three miles of their coasts. 43 U.S.C. 1301, 1311(a), 1312. The OCSLA affirmed the federal government's primary authority over the seabed beyond that area, which it denominated the "outer Continental Shelf" (OCS). 43 U.S.C. 1331(a), 1332(1).

The OCSLA also created a body of substantive law to govern the OCS. It did so in several ways: by extending federal law and jurisdiction to the OCS, 43 U.S.C. 1333(a)(1), (b), (c) and (f); by delegating specific authority to the Coast Guard, the Army, and the Department of the Interior, *e.g.*, 43 U.S.C. 1333(d) and (e), 1334; by preserving federal admiralty jurisdiction on the high seas above the OCS, 43 U.S.C. 1332(2); and by adopting the civil and criminal laws of the adjacent states to the extent those laws are not inconsistent with federal law. 43 U.S.C. 1333(a)(2)(A).

One of the federal statutes specifically extended by the OCSLA is the Longshore and Harbor Workers' Compensation Act (LHWCA or Longshore Act), 33 U.S.C. 901 *et seq.* The Longshore Act provides federal workers' compensation coverage for employees disabled

or killed in the course of maritime employment (a "status" requirement) on the navigable waters of the United States or in certain adjoining areas (a "situs-of-injury" requirement). 33 U.S.C. 903. Congress has extended this workers' compensation regime to cover several other categories of workers, including those injured while working for nonappropriated fund instrumentalities, 5 U.S.C. 8171(a), and federal contractors overseas, 42 U.S.C. 1651(a)(4). Its extension to OCS workers was effected by Section 4 of the original OCSLA statute, which provided, in pertinent part:

> (b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf * * * .
>
> (c) With respect to disability or death of an employee resulting from any injury occurring as the result of operations described in subsection (b), compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

OCSLA, ch. 345, § 4(b) and (c), 67 Stat. 463.

In 1978, the OCSLA was amended for various reasons unrelated to workers' compensation. Among the changes, Subsection (c) of Section 4 became Subsection (b), and was modified to change the description of covered injuries from those "occurring as a result of operations described in subsection (b)," to actually incorporat-

ing a description of those "operations" from former Subsection (b):

> With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshore and Harbor Workers' Compensation Act.

43 U.S.C. 1333(b); see H.R. Conf. Rep. No. 1474, 95th Cong., 2d Sess. 81 (1978) ("This amendment involves no change in existing law. It was not the intent * * * to alter in any way the existing coverage of the [LHWCA]."); *Curtis* v. *Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 809 (3d Cir. 1988) ("[T]he 1978 amendment combining (b) and (c) was not meant to change the meaning of the law.").

2. Luisa A. Valladolid (respondent) is the widow of Juan Valladolid (Valladolid or decedent), who was employed as a roustabout by petitioner, an oil exploration and extraction company. Pet. App. 57. The decedent spent approximately 98% of his time working on one of petitioner's oil platforms, which was located on the OCS more than three miles from the California coast. *Id.* at 3. He spent the remainder of his working time on land at his employer's crude oil plant, called "La Conchita," in Ventura, California. *Ibid.*; see *id.* at 57. The decedent's death occurred in 2004, during working hours at the La Conchita plant. His assigned duty at the time was to use a forklift to clean up scrap metal debris that

had been delivered to the plant from the OCS platforms. *Id.* at 57-58. He died after being crushed by the forklift while harvesting plantains growing near one of the plant's service roads. *Id.* at 58.[1]

3. Following her husband's death, respondent received death benefits under California's workers' compensation program. Pet. App. 54. She also filed a claim for Longshore Act benefits with the United States Department of Labor, Office of Workers' Compensation Programs (OWCP), asserting that her husband was covered by the Longshore Act, both directly and as extended by the OCSLA. *Ibid.*[2] After the parties failed to resolve the claim voluntarily, it was referred to an administrative law judge (ALJ) for a formal hearing pursuant to 33 U.S.C. 919(c) and (d).

a. The ALJ granted petitioner's motion for summary judgment. Pet. App. 53-93. The ALJ held that Valladolid had status under the OCSLA "because of his duties on [the employer's offshore] platform," but denied benefits because Valladolid's injury did not occur on an OCSLA-covered situs. *Id.* at 87-88, 93. The ALJ recognized that the Ninth Circuit had not directly ad-

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[1] Valladolid's foraging activities at the time of his death were not part of his assigned duties. The Longshore Act (either directly or by extension through the OCSLA) covers only injuries "arising out of and in the course of employment." 33 U.S.C. 902(2). This issue was not addressed by the court of appeals or during the administrative proceedings because petitioner was awarded summary judgment on other grounds.

[2] Petitioner paid respondent $807.69 per week for 52 weeks pursuant to the California Workers' Compensation Act. Pet. App. 54 n.2. Under the Longshore Act, a surviving spouse is generally entitled to 50% of the decedent's average weekly wage until death or remarriage. 33 U.S.C. 909(b). If respondent is ultimately successful in obtaining Longshore Act benefits, petitioner will be entitled to offset any payments made to respondent under California law. 33 U.S.C. 903(e).

dressed the issue and that the Third Circuit had ruled in *Curtis* that Section 1333(b) has no situs requirement, 849 F.2d at 809. The ALJ, however, accepted the contrary view articulated by the Fifth Circuit in *Mills* v. *Director, OWCP*, 877 F.2d 356 (1989) (en banc), which had found a situs requirement in that provision. Relying on *Mills*, the ALJ denied the claim because Valladolid's injury did not take place "on the subsoil and seabed of the outer continental shelf, or the artificial islands and structures erected thereon." Pet. App. 92.[3]

b. The Department of Labor's Benefits Review Board (Board) affirmed. Pet. App. 35-52. The Board agreed with the ALJ's legal conclusion that Section 1333(b) contains a situs-of-injury requirement, finding the Fifth Circuit's *Mills* decision to be more consistent with the OCSLA's legislative history than the Third Circuit's view. Pet. App. 51.[4]

c. The court of appeals reversed in part, ruling that the OCSLA does not have a situs-of-injury requirement. Pet. App. 18.[5] In analyzing the situs issue, the court of

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[3] The ALJ also rejected respondent's assertion that her husband was directly covered by the Longshore Act, giving two independent reasons for doing so. First, Valladolid did not have "status" as a maritime employee under 33 U.S.C. 902(3), because "[w]hatever loading and unloading the Decedent did was incidental to his primary role as a roustabout on the offshore platforms and the La Conchita site." Pet. App. 79. Second, the injury did not occur on a LHWCA-covered "situs" because the La Conchita facility was not "upon the navigable waters of the United States" or an "adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel." *Id.* at 82 (quoting 33 U.S.C. 903(a)).

[4] The Board also accepted, as supported by the record, the ALJ's finding that the La Conchita facility was not a maritime situs covered directly by the Longshore Act. Pet. App. 42-43.

[5] Although the Director of the OWCP, who administers the OCSLA, was formally a respondent before the court of appeals, 20 C.F.R.

appeals found no controlling authority, and little guidance, in decisions by this Court and the Ninth Circuit. It therefore turned to the plain language of Section 1333(b), finding it to be "unambiguous in not including a situs-of-injury requirement." *Ibid.* The court explained that the absence of any explicit situs requirement in Section 1333(b) and the presence of explicit situs requirements in Section 1333's other subsections "reflects an intent not to limit [Section 1333(b)] in the same manner." *Id.* at 17.

The court of appeals held that Section 1333(b) extends Longshore Act coverage to workers injured on land where there is "a substantial nexus between the injury and extractive operations on the shelf." Pet. App. 28. Because the ALJ and the Board had denied the OCSLA claim based on the fact that Valladolid's death did not take place on the OCS, the court remanded the case to the Board to apply its test and determine in the first instance whether respondent was entitled to benefits. *Id.* at 30.[6]

ARGUMENT

The court of appeals correctly concluded that the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, does not contain a situs-of-injury requirement and properly reversed the decision of the Benefit Review Board (Board), which had denied respondent's OCSLA claim solely because her husband's injury did

802.410(b); *Ingalls Shipbuilding, Inc.* v. *Director, OWCP*, 519 U.S. 248, 269 (1997), he did not participate below.

[6] The court of appeals affirmed the Board's denial of respondent's direct Longshore Act claim, agreeing that the La Conchita facility was not a maritime situs as defined by 33 U.S.C. 903(a). Pet. App. 33-34. That claim is not at issue here.

not occur on the Outer Continental Shelf (OCS). This conclusion is consistent with a decision of the Third Circuit but inconsistent with the Fifth Circuit's interpretation of the statute. Further review of this issue is not warranted, however, because the case is currently in an interlocutory posture, and it is possible that respondent will be denied benefits under the standard adopted by the court of appeals. The difference in approach between the court of appeals here and the Fifth Circuit thus may not make a difference in this case. Moreover, the court of appeals made clear that it adopted a highly general standard for determining which injuries taking place outside the OCS would be covered by the statute and that the standard was subject to refinement in future cases. Review of that standard now would be premature.

1. The OCSLA extends Longshore and Harbor Workers' Compensation Act (LHWCA or Longshore Act) coverage to "any injury occurring as the result of operations conducted on the [OCS] for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources * * * of the [OCS.]" 43 U.S.C. 1333(b). There is no dispute that workers injured on the OCS, or structures attached to it, are covered by the Longshore Act through Section 1333(b). The disagreement focuses on whether, and under what circumstances, Section 1333(b) extends the Longshore Act to workers injured outside that geographic situs.

a. The Third Circuit ruled that the OCSLA does not have a situs-of-injury requirement in *Curtis* v. *Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 811 (1988). Curtis was employed to gather data at offshore oil wells and evaluate offshore drilling sites. *Id.* at 806 n.2. He was seriously injured in an automobile accident while

driving a company car to meet a helicopter that was to fly him to an OCS platform off the New Jersey coast. The Board denied benefits on the ground that Curtis "was not at the time of the accident subject to the unique working conditions and hazards associated with the exploration and development of the Shelf." *Id.* at 808-809 (citation omitted).

The Third Circuit reversed, concluding that the plain language of Section 1333(b) "did not place any nexus, situs or geographic restrictions on claims for injuries in connection with outer continental shelf operations." *Curtis*, 849 F.2d at 809. It contrasted Section 1333(b) with Section 1333(a)(1), which imposes a clear situs requirement in extending federal substantive law and jurisdiction only to the OCS itself and "artificial islands and fixed structures which may be erected thereon." *Ibid.* (quoting 43 U.S.C. 1333(a)(1) (1958)). Turning to the meaning of Section 1333(b)'s reference to "any injury occurring as the result of operations conducted on the [OCS]," the Third Circuit concluded that the provision extends Longshore Act coverage to injuries that would not have occurred "but for" operations on the OCS. *Id.* at 809-811. It therefore found that Curtis was entitled to Longshore Act benefits. *Id.* at 811.

b. The Fifth Circuit has taken a contrary view, concluding that the OCSLA extends the Longshore Act only "to employees who (1) suffer injury or death on an OCS platform or the waters above the OCS; and (2) satisfy [a] 'but for' status test." *Mills* v. *Director, OWCP*, 877 F.2d 356, 362 (1989) (en banc). Mills was injured on land while constructing an oil platform destined for the OCS. *Id.* at 357. A Fifth Circuit panel had ruled that Mills was entitled to Longshore Act benefits, finding that his injury had been proximately caused by operations on the

OCS and that Section 1333(b) did not impose any situs-of-injury requirement. *Id.* at 357-358.

The *Mills* majority began its analysis with the acknowledgment that the text of Section 1333(b) "is open to interpretation." 877 F.2d at 359. Observing that each of Section 1333's other five subsections contains an explicit situs requirement, the court discerned a congressional intent "to regulate the OCS, not those areas that already were governed by state law." *Ibid.*

The *Mills* dissent rejected the majority's fundamental premise, concluding that Section 1333(b) "is not ambiguous in its lack of a situs requirement." 877 F.2d at 362. According to the dissent, the explicit situs requirements contained in Section 1333's other subsections, and in the Longshore Act itself, demonstrate that "Congress knows how to include a situs requirement in a statute when it intends that such a requirement should exist." *Id.* at 363.

c. The court of appeals below agreed with the Third Circuit and the *Mills* dissent that Section 1333(b) does not contain a situs-of-injury requirement. Pet. App. 1-34. The court of appeals began its analysis by considering this Court's statement in *Offshore Logistics, Inc.* v. *Tallentire*, 477 U.S. 207 (1986), that Section 1333(b) "superimposes a status requirement on the [OCSLA's] otherwise determinative * * * situs requirement." Pet. App. 8-9 (quoting *Tallentire*, 477 U.S. at 219 n.2). The court described the remark as "textbook dictum" because—as the *Tallentire* Court itself explained—Section 1333(b) had "no bearing on th[at] case." *Id.* at 9. In the court of appeals' view, this remark was not entitled to the deference often accorded the Supreme Court's considered dicta because "[t]here is no analysis or reasoning behind the Court's statement that a situs

requirement applies to § 1333(b)," which "strip[s] the dictum of any predictive or persuasive value." *Id.* at 10.[7]

In the absence of controlling authority, the court of appeals treated the issue as "a straightforward question of statutory construction." Pet. App. 13. The court reasoned that the plain text of Section 1333(b) extended the Longshore Act to some injuries suffered outside the OCS because "the results of an operation may regularly extend beyond its immediate physical location." *Id.* at 16. The court of appeals rejected the *Mills* court's argument that the explicit situs requirements in Section 1333(b)'s other subsections reveal an overarching congressional intent to apply the OCSLA only where necessary to fill gaps in state law. *Id.* at 16-17. Instead, the court reasoned that these provisions demonstrate that "Congress had the ability to craft a situs-of-injury requirement," but chose not to do so in Section 1333(b), concluding that the provision "is unambiguous in not including a situs-of-injury requirement." *Id.* at 17-18.

2. There is a conflict between the Ninth and Third Circuits, on the one hand, and the Fifth Circuit, on the other, on the question of whether the OCSLA extends the Longshore Act only to injuries incurred within the geographic situs of the OCS.[8] Review of the issue is nevertheless unwarranted because this case is in an inter-

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[7] The court of appeals also observed that the Court's comment in *Tallentire* may not have referred to a situs-of-injury requirement at all, but rather to the "situs-of-operations" requirement clearly evident in Section 1333(b). Pet. App. 10.

[8] Petitioner alleges that the court of appeals' ruling also conflicts with this Court's decisions in *Tallentire* and *Herb's Welding, Inc.* v. *Gray*, 470 U.S. 414 (1985). Pet. 15-17. There is no such conflict. As the court of appeals accurately explained, the isolated comments in those decisions on which petitioner relies were dicta; Section 1333(b) was not at issue in those cases. Pet. App. 9-11 & n.2.

locutory posture. The court of appeals remanded the case to the Board for a determination whether respondent was entitled to benefits under the court of appeals' test. Pet. App. 30. Upon remand, petitioner will have an opportunity to argue to the ALJ, the Board, and, if necessary, the court of appeals that there was no "substantial nexus between [Valladolid's] injury and extractive operations on the shelf." *Id.* at 28..

If petitioner prevails on that contention, resolution of the question presented will have no effect on the outcome of this case. If petitioner does not prevail before the agency, the case may come before the Court in a posture better suited for review. See, *e.g.*, *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) ("[W]e have authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals.") (citation omitted). Allowing the agency and the court of appeals an opportunity to apply the newly announced "substantial nexus" test may clarify the test's contours and provide a more concrete dispute to review.

In sum, this case presents no exceptional circumstances justifying a departure from the Court's typical practice of denying a writ of certiorari to review an interlocutory decision. See, *e.g.*, *Virginia Military Inst.* v. *United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting the denial of the petition for certiorari) ("We generally await final judgment in the lower courts before exercising our certiorari jurisdiction."); see generally Eugene Gressman et al., *Supreme Court Practice* § 4.18, at 280-281 (9th ed. 2007).

3. In the view of the Director of the OWCP (Director), the court of appeals correctly concluded that Sec-

tion 1333(b) does not contain a situs-of-injury requirement. There is no such limitation in the text of that provision. In light of the explicit situs requirements contained in Section 1333(a), (c), (d) and (e), the absence of such a requirement in Section 1333(b) is best understood to mean that Congress did not intend to limit OCSLA's extension of the Longshore Act to injuries suffered on the OCS itself. See pp. 10-11, *supra*.

How to nonetheless identify an "injury occurring as the result of operations conducted on the [OCS]," and thereby determine what categories of workers injured outside the OCS are brought within the Longshore Act's coverage by virtue of Section 1333(b), is a more difficult question. Having rejected a situs-of-injury test, the court of appeals declined to adopt the Third Circuit's *Curtis* test "to the extent that it requires only a 'but for' test of causation," because, in the court of appeals' view, "[i]njuries with a tenuous connection to the [OCS] are not covered." Pet. App. 28.[9] Instead, the court of ap-

[9] Petitioner alleges a conflict between the decision below and the Third Circuit's decision in *Curtis*. Pet. 9-10. While the court of appeals did decline to adopt the Third Circuit's "but for" test, Pet. App. 27-28, any conflict between the circuits' approaches may be illusory. There is no reason to assume that the Ninth Circuit would deny coverage on the facts presented in *Curtis*. Nor is it clear that the Third Circuit would take its "but for" language literally by awarding Longshore Act benefits to a worker with only a tenuous connection to OCS operations; Curtis himself appears to have spent a considerable portion of his working time on an OCS drilling rig. *Curtis*, 849 F.2d at 806. Moreover, both courts relied on a line of pre-*Mills* Fifth Circuit cases beginning with *Nations* v. *Morris*, 483 F.2d 577, cert. denied, 414 U.S. 1071 (1973), in developing their respective tests. See *Curtis*, 849 F.2d at 809, 811; Pet. App. 28. It is thus possible that the Third and Ninth Circuit tests will converge.

peals required a "substantial nexus between the injury" and OCS operations. *Ibid.* To meet that standard:

> [T]he claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations. An injury sustained during employment on the outer continental shelf itself would, by definition, meet this standard. However, an accountant's workplace injury would not be covered even if related to outer continental shelf operations, while a roustabout's injury in a helicopter en route to the outer continental shelf likely would be. We leave more precise line-drawing to the specific factual circumstances of later cases.

Ibid.

The Director agrees with the court of appeals that a mechanical "but for" test is insufficient. If taken literally, such a test could extend coverage to workers and injuries with little substantial connection to the OCS itself. It is difficult in the abstract to evaluate the court of appeals' alternative test, *i.e.*, that "the claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations." Pet. App. 28. That standard has not been applied in this case or any other. Indeed, the court expressly "le[ft] more precise line-drawing to the specific factual circumstances of later cases." *Ibid.*

It is not clear, for example, whether the court's standard would require a strict nexus between OCS operations and the particular task a worker was performing at the moment of injury, or instead a nexus between OCS operations and the employee's "work performed" generally. Pet. App. 28. The Director believes the later

approach is the more workable one, as land-based workers who perform both OCS-related and non-OCS-related tasks would not oscillate between Longshore Act and state workers' compensation coverage throughout the workday. In addition, the court of appeals' standard, depending on how it is applied, could prove overly inclusive in that it might extend coverage to workers who do not perform any work on the OCS itself. While Congress's decision not to include a situs-of-injury requirement in Section 1333(b) reflects an intent to extend Longshore Act coverage to some injuries occurring outside the OCS, it is undeniable that the OCSLA's primary focus is the OCS itself. Covering injuries to entirely land-based workers would be in tension with that intent.

The Director believes that Section 1333(b) is best interpreted as creating a class of OCS workers who retain their Longshore Act coverage when they perform OCS-related work on land.[10] Those are the workers who, in the court of appeals' terminology, have a "substantial nexus" with operations on the OCS. Pet. App. 28. Interpreting Section 1333(b) as a status test primar-

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[10] In *Curtis* and *Mills*, the Director argued that Section 1333(b) does not contain a situs-of-injury requirement and extends Longshore Act coverage to all workers satisfying a "but for" status test. *Curtis*, 849 F.3d at 307 n.4; *Mills*, 877 F.2d at 360 n.7. In a later case, however, the Director expressed the view that the most appropriate test that could be derived from Section 1333(b) would extend the Longshore Act only to workers who (1) are injured on, over, or en route to or from the OCS by air or sea, and (2) satisfy a "but for" status test. Gov't Br. in Opp. at 19-20, *Pickett* v. *Petroleum Helicopters, Inc.*, 535 U.S. 1080 (2002) (No. 01-1042). He added that "it is also plausible that Congress intended to create a class of 'OCS workers' who would retain LHWCA coverage wherever their work activities took them." *Id.* at 18. After further consideration, the Director believes that this latter view is not only plausible, but the best interpretation of Section 1333(b).

ily focused on OCS workers would safeguard against the possibility of employees' moving in and out of coverage during the workday. It would also provide maximum protection to true OCS workers while denying OCSLA coverage to employees who never work on the OCS. Finally, this test would also offer more predictability than a fact-based inquiry focused on the particulars of a given injury.

The Director's proposed test would be analogous to the test developed in *Chandris, Inc.* v. *Latsis*, 515 U.S. 347, 368 (1995), which extended Jones Act coverage to workers with a "connection to a vessel * * * that is substantial in terms of both its duration and its nature." Employees who satisfy this status test would be covered by the Longshore Act, as extended by the OCSLA, even when they performed work on land. Other workers would be covered only if injured on the OCS itself. While borrowing the *Chandris* test would certainly not end disputes about OCSLA coverage, it would likely result in a coverage framework that is both relatively predictable and in keeping with the OCSLA's purpose.

4. The Director's interpretation of the statute, rather than the Board's, is entitled to deference. See *Potomac Elec. Power Co.* v. *Director, OWCP*, 449 U.S. 268, 278 n.18 (1980) ("[T]he Benefits Review Board is not a policymaking agency; its interpretation of the LHWCA thus is not entitled to any special deference from the courts."); *Metropolitan Stevedore Co.* v. *Rambo*, 521 U.S. 121, 136 (1997) ("[T]he Director's reasonable interpretation of the Act brings at least some added persuasive force to our conclusion."). Because the Director did not participate in this litigation before the court of appeals, the court did not have the benefit of his views. As the court of appeals refines its "substantial

nexus" test (whether in this case or another), it may take into account the Director's considered views on the question. Such a decision would provide a better vehicle than this one for review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OPPOSITION BRIEF

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No. 10-507

IN THE
SUPREME COURT OF THE UNITED STATES

PACIFIC OPERATORS OFFSHORE, LLP, ET AL.
Petitioners,
v.
LUISA L. VALLADOLID, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT VALLADOLID IN OPPOSITION TO PETITION FOR CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether the workers'-compensation provision of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(b), imposes a situs-of-injury requirement for its coverage.

2. If not, how the "occurring as the result of operations conducted on the [OCS]" test explicitly stated in the provision should be interpreted.

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BRIEF ROR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Louisa Valladolid hereby urges the Court to deny the petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW and JURISDICTION

Contrary to Petitioners' characterization of the Administrative Law Judge's and Benefits Review Board's decisions below as "unpublished," Pet. 1, the former (Pet. App. 53) is reported at 41 Ben. Rev. Bd. Serv. (MB) 795(ALJ), and the latter (Pet. App. 35) is reported at 42 Ben. Rev. Bd. Serv. (MB) 67. Petitioners accurately recite, Pet. 1, the report of the court of appeals's opinion below (604 F.3d 1126) and the bases on which this Court's jurisdiction is invoked.

STATEMENT

1. The Longshore and Harbor Workers' Compensation Act[1] is the only federal private-sector workers'-compensation law. Its benefit provisions are based closely on those of state laws on the same subject; it imposes no-fault liability on the employer, for medical benefits and for periodic benefits for disability or death resulting from injuries "arising out of and in the course of employment" and from occupational diseases. Longshore Act §§ 2(2), 3(a), 7-9, 33 U.S.C. §§ 902(2), 903(a), 907-909. As a general proposition, the Longshore Act forecloses tort remedies

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[1] Act of Mar. 4, 1927, c. 509, 44 Stat. 1424, *as amended*, 33 U.S.C. §§ 901-50 ("Longshore Act").

against an insured employer, and also recovery from a vessel owner or operator (whether or not it is the employer) based on "unseaworthiness," for injuries within its coverage. *Id.* § 5(a), (b), 33 U.S.C. § 905(a), (b).

The Longshore Act's own "coverage" is now limited principally by the requirement that the injured worker have been "engaged in maritime employment" (*id.* § 2(3), *as amended*, 33 U.S.C. § 902(3); *see, e.g., Director, OWCP v. Perini North River Assoc.*, 459 U.S. 297 (1983); *Chesapeake & Ohio R. Co. v. Schwalb*, 493 U.S. 40 (1989)), but not a "member of a crew of any vessel" (*id.* § 2(3)(G)). That coverage has been extended, however, by the Defense Base Act, 42 U.S.C. §§ 1651-54; the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(b); and the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §§ 8171-73.[2] This case concerns the scope of the extension by the Outer Continental Shelf Lands Act ("OCSLA" or "Lands Act"), whose only relevant provision is that the Longshore Act applies:

> [w]ith respect to disability or death of an employee resulting from any injury occurring as the result of operations, conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf[.]

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[2] The Longshore Act's former application to private employment in the District of Columbia (District of Columbia Workmen's Compensation Act of 1928, 45 Stat. 600) has been supplanted by District "home-rule" legislation since 1982 (*see generally, e.g., Railco Multi-Construction Co. v. Gardner*, 902 F.2d 71, 73-74 & nn.2-4 (D.C. Cir. 1990)).

43 U.S.C. § 1333(b).[3]

2. Petitioners' recitation of the underlying facts is essentially accurate. In short, Petitioner Pacific Operators Offshore operates two fixed platforms, on the outer continental shelf (beyond state waters) off the Southern California coast, and a "flocculation plant" on the coast to which well fluids are transported by pipeline and processed. It transports its workers, and materials and equipment, to and from the platforms by a one-hundred-foot crew- and supply boat, which uses another oil company's pier about three miles north of the flocculation plant property. Respondent Valladolid's husband Juan was killed in the course of his employment as a roustabout – a general oilfield laborer – for Pacific Operators. Although he spent about 98 percent of his time working on one of the platforms, he had occasional assignments to work at the plant property ashore. His death occurred during such an assignment. More particularly, on the afternoon of June 2, 2004, he was assigned to retrieve a forklift at that property and consolidate scattered piles of scrap metal (worn-out pipes, tanks, catwalks, etc.) – which had been brought ashore from the platforms by boat, trucked from the pier to the plant, and dumped in vacant areas of the plant's yard, accumulating over a couple of years – for pick-up by a scrap-metal dealer. He was found dead, crushed under the wheels of the forklift, an hour and a quarter later.[4]

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[3] The provision, like the Longshore Act itself, excludes members of vessels' crews. 43 U.S.C. § 1333(b)(1).

[4] Petitioners mention – accurately, but irrelevantly – that the accident report stated that he had apparently been standing on the tines of the forklift, ten feet off the track leading from where he had picked up the forklift to the plant's back yard

3. Pacific Operators's workers'-compensation insurer paid Respondent Valladolid some death benefits under California law (the record does not reveal when or in what amounts), but she sought the greater benefits payable under the Longshore Act, either of its own force or through its extension by the Lands Act. So far as now relevant,[5] the ALJ who decided the case under the authority of Longshore Act § 19(c)-(d), 33 U.S.C. § 919(c)-(d), recognized the conflict between the Third and Fifth Circuits on whether the Lands Act compensation provision "contains a situs[-of-injury] requirement," Pet. App. 88-92, and concluded

> . . . that Fifth Circuit precedent . . . is the most persuasive. In order to be covered by the OCSLA, an employee must have suffered an injury on the subsoil and seabed of the outer

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where the scrap metal lay, attempting to pick a bunch of plantains, when it moved, casting him to the ground and rolling onto him. Pet. 5. The ALJ mentioned this fact in passing (Pet. App. 54), and the Benefits Review Board mentioned it obliquely (Pet. App. 37), but it played no part in any of the decisions below; Petitioners have never contended that the putative brief deviation from the decedent's assigned task took him out of the "course of employment" so as to make his death noncompensable as beyond the definition of a covered "injury" in Longshore Act § 2(2), 33 U.S.C. § 902(2); nor does it rely on anything about that putative circumstance in urging this Court's review.

[5] The ALJ, the Board, and the court of appeals each also addressed, and rejected, Respondent Valladolid's alternative argument that the Longshore Act itself applied to the worker's death based on the proposition that the scrap metal was the "cargo" of the supply boat that brought it ashore, and that its consolidation for pick-up in the plant yard was the final step in the "overall process of unloading" it. The claimant has not sought this Court's review of that ruling.

> continental shelf, or the artificial islands and structures erected thereon [or] the waters above it.

App. 92. Accordingly, he granted Pacific Operators's motion for summary decision denying the claim. App. 93.

On the widow-claimant's appeal under Longshore Act § 21(b)(3), 33 U.S.C. § 921(b)(3), the Benefits Review Board affirmed. Again so far as relevant, the Board addressed "the issue [as] whether the OCSLA [compensation-law provision] applies only if the employee's injury or death occurs on the OCS," Pet. App. 44, and found on the basis of a *dictum* in a Ninth Circuit decision that that court was "more closely aligned with the Fifth Circuit than the Third Circuit on th[is] issue," Pet. App. 51; *see id.* 44-51.

4. The court of appeals, on review under § 21(c) of the Longshore Act, 33 U.S.C. § 921(c), reversed. It found:

> The theory that [§ 1333](a) provides a situs requirement applicable to all of § 1333 is simply inconsistent with its plain language, statutory structure, and legislative history. Subsection (a) merely extends federal jurisdiction and federal and state law to the outer continental shelf. It has no applicability beyond that purpose, other than to provide a situs definition that several other provisions expressly incorporate. Because subsection (b) does not incorporate (a), that provision has no bearing on our analysis.
>
> We hold that § 1333(b) may apply to injuries occurring outside the situs of the outer continental shelf, so long as they occur "as the re-

> sult of operations conducted on the outer continental shelf."

Pet App. 27. It reasoned, however, that, rather than a "simple 'but for' test," the "occurring as a result of operations conducted on the [OCS]" test of § 1333(b) requires

> . . . a substantial nexus between the injury and extractive operations on the shelf. To meet the standard, the claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations. . . .. We leave more precise line-drawing to the specific factual circumstances of later cases.

Pet. App. 28. It "remand[ed] the OCSLA [coverage] question to the BRB for further consideration" focused on that test. Pet. App. 30.

REASONS FOR DENIAL OF THE WRIT

I. At Least at the Present Stage of the Proceedings, This Case Is an Inappropriate Vehicle for Resolution of the Intercircuit Conflict on the Basic Question Whether the OCSLA Compensation-Law Provision Contains a Situs-of-Injury Requirement.

A. The Well-Defined Conflict on the Asserted Situs-of-Injury Requirement

Clearly there is a conflict among the courts of appeals regarding whether the coverage of the compensation-law provision of the Lands Act is subject to a situs-of-injury requirement.

No one disagrees that there is a situs-of-*operations* requirement, explicit in the provision's terms: the mineral-extraction operations "as the result of"

which the injury or death occurs must be "conducted on" the OCS. Until 1989, the Fifth Circuit, offshore of which the overwhelming majority of such operations have always been conducted, had uniformly and repeatedly held that there was *not* an additional situs-of-*injury* requirement. This Court had clarified that admiralty law did not apply to the "fixed platforms" or "artificial islands" erected on the seabed of the Shelf, to which the Lands Act's *choice-of-law* provision – making adjacent-state law applicable as surrogate federal law, to the extent not inconsistent with otherwise applicable federal law, on such platforms, now § 1333(a)(2)(A) – applied. *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969). But it had likewise clarified that adjacent-state tort law did not apply through § 1333(a)(2)(A) to injuries or deaths of OCS platform workers in the *waters over* the OCS. *Offshore Logistics v. Tallentire*, 477 U.S. 207, 217-220 (1986). But the Fifth Circuit adhered to its longstanding view that the *compensation-law* provision of the Act, now § 1333(b), unlike the choice-of-law provision of § 1333(a), does *not* depend on where the injury or death occurs; "[o]bviously Congress purposefully established a [compensation] system [in what is now § 1333(b), then § 1333(c)] that would apply without regard to physical location." *Nations v. Morris*, 483 F.2d 577, 584 (5th Cir.), *cert. denied*, 414 U.S. 1071 (1973). *See also, e.g., Stansbury v. Sikorski Aircraft*, 681 F.2d 948, 950-951 (5th Cir.) ("We have construed this section to apply to injuries occurring as a result of the operations described without regard to the physical situs of the injury. . . .. Stansbury meets the status criteria set out in OCSLA. [He] was inspecting work done under his supervision on a fixed rig located on the OCS. His work furthered the rig's operations and was in

the regular course of the extractive operations on the OCS. But for those operations, he would not have been in the helicopter. His death, therefore, occurred 'as a result of operations' [on the OCS] as required by the OCSLA."), *cert. denied*, 459 U.S. 1089 (1982); *Barger v. Petroleum Helicopters, Inc.*, 692 F.2d 337 (5th Cir.), *cert. denied*, 461 U.S. 958 (1982). Thus, offshore fixed-platform workers, and helicopter pilots engaged in transporting such workers to and from OCS platforms, injured or killed on the high seas in the course of such transportation, were limited to the Longshore Act compensation remedy, rather than being entitled to admiralty tort remedies, against their employers or fellow employees. *See* Longshore Act §§ 5(a), 33(*i*), 33 U.S.C. §§ 905(a), 933(*i*).

In *Mills v. Director, OWCP*, 846 F.2d 1013 (5th Cir. 1988), the Court applied the same principles to hold that the OCSLA compensation-law provision applied to a worker injured in the course of his work "engaged in welding operations [at a shipyard] on shore fabricating a platform destined for use on the Outer Continental Shelf," *id.* at 1014.

> [T]he platform Mills worked on was specifically designed for and being built solely for use in operations on the Shelf; consequently, but for operations on the Shelf, this particular platform would not have been built. Like the workers in *Barger* and *Stansbury*, Mills' injury would not have occurred but for the operations on the Shelf.

Id. at 1015. The court clarified that its "but for" test

> . . . is not the simple '*causa sine qua non*' test of tort law, but includes the requirement that the claimant show a nexus between the work being done and operations on the shelf similar to the

> proximate cause test in tort law; it requires that the work 'further[s] the operation of a fixed rig on the shelf *and [is] in the regular course of extractive operations on the shelf*.' Construction of a platform specifically destined for the Shelf is included in this test.

Id. at 1015 (emphasis by the court).

In *Curtis v. Schlumberger Offshore Service, Inc.*, 849 F.2d 805 (3d Cir. 1988), the Third Circuit likewise followed *Nations v. Morris* and its progeny to hold the Lands Act's extension of the Longshore Act applicable to an OCS worker's injury ashore – there, in the course of driving to meet a helicopter that would take him to the offshore rig. It pointed out that the Ninth Circuit as well had "noted that 'in the absence of any other limitation on the face of the statute or in the legislative history of the [OCSLA], section 1333(b) should be construed as extending [Longshore Act] coverage to all victims of disabling or fatal injuries sustained while working to develop the mineral wealth of the [outer continental shelf].'" *Id.* at 810, *quoting Kaiser Steel Corp. v. Director, OWCP*, 812 F.2d 518, 520 (9th Cir. 1987) (dictum). It "agree[d] with the Fifth Circuit position that the 'but for' test is appropriate in establishing whether [a claimant]'s injury occurred as a result of operations on the outer continental shelf." *Id.* at 811.

Meanwhile, however, the Fifth Circuit granted rehearing *en banc* in *Mills* and overruled the panel's decision. *Mills v. Director, OWCP*, 877 F.2d 356 (5th Cir. 1989) (11 to 3 decision). It reasoned that the compensation-law provision, like the rest of the OCSLA, was limited to a "gap-filling" role, and that

> [o]ne obvious void in the law governing the OCS was the lack of a workers' compensation scheme

> for thousands of workers employed in the dangerous oilfield extraction industry. Congress filled that void in § 1333(b) when it adopted the LHWCA's benefits provision to cover non-seamen employed in the oil patch on the OCS.

877 F.2d at 358. Thus, the legislative purpose "did not encompass already-regulated workers on state soil." *Id.* at 359; *see also id.* at 362 ("This interpretation is compelling in light of Congress' objective: filling voids in the law governing mineral extraction on the OCS."). It quoted this Court's statement in *Tallentire* that "Congress determined that the general scope of OCSLA's coverage . . . would be determined principally by locale, not the status of the individual injured or killed," and bolstered its conclusion by pointing out:

> The [*Tallentire*] Court followed this discussion of § 1333(a)'s coverage with a comparison to § 1333(b). The Court states, "Only [§ 1333(b)] . . . *superimposes* a status requirement on the otherwise determinative OCSLA situs requirement. . . ." [477 U.S.] at 219 n. 2 (emphasis added). We cannot accept the Director's explanation that the Court meant to "replace" situs with status when it used "superimposes." The Court could not have made it clearer that a worker must demonstrate status and situs to recover LHWCA benefits under § 1333(b).

877 F.2d at 361. It dismissed the long line of its own authority stating that the compensation-law provision imposed no situs-of-injury test as "dicta [that] may be overly broad," and despite *Tallentire*'s unmistakable holding that § 1333(a)'s choice-of-law provision had no application to injuries on the high seas *over* the OCS, held that § 1333(b) applied to OCS

workers' injuries sustained there, as its previous decisions had held on the basis of the no-situs-of-injury-requirement reasoning. *Id.* at 361-62.

The court of appeals in the present case, on the other hand, found the *Tallentire* footnote to be "textbook dictum," "of the unconsidered variety not entitled to special deference," particularly as the footnote concluded by pointing out that the compensation-law provision "has no bearing on this case" and as its scope "was not before the Court, was not briefed by the parties, and had no relevance to the case before it." Pet. App. 8-10. It added that the "import" of the *Tallentire* footnote's reference to "the otherwise determinative OCSLA situs requirement" is "debatable," as "it is not clear that the Court's statement requires a 'situs-of-injury,' as opposed to [the clear and undisputed] 'situs-of-operations,' test." Pet. App. 10. It also found unpersuasive the dicta in previous Ninth Circuit opinions that did not present the issue, which pointed in contrary directions. Pet. App. 11-13. The court thoroughly examined § 1333 as a whole (including the subsequent subsections stating a variety of criteria for the application of other federal statutes and authorities, some explicitly limited to occurrences *on* OCS platforms and others explicitly extending beyond them, Pet. App. 14-15, 16-17, 25-26), its legislative history (showing that the *Mills* reasoning that the compensation provision was intended only as a gap-filler made no sense as state laws were always applicable to injuries on the platforms, *id.* at 19-21, and that *Mills* had otherwise relied on legislative history that, for multiple reasons, provided no reliable evidence of intent on the question at issue under the version of the statute enacted, *id.* at 21-22 & n.6), and the policy considerations relied upon by the *Mills* majority (finding them unper-

suasive, speculative, and irrelevant, *id.* at 23-24). It concluded that the terms of § 1333(b) are "unambiguous" and "clear in not containing a situs-of-injury requirement." Pet. App. 18, 23. Subsection (b) "does not incorporate" either of the differing situs descriptions of subsections (a)(1) and (a)(2) as a situs-of-injury requirement, nor was the *Mills* court's expansion of the subsection (a)(2) description, to encompass the high seas as well within its invented situs-of-injury requirement for application of subsection (b), capable of being harmonized with *Tallentire*. Pet. App. 24-27. In sum, like the pre-*Mills* Fifth Circuit decisions and *Curtis*, the court concluded "that § 1333(b) may apply to injuries occurring outside the situs of the outer continental shelf, so long as they occur 'as the result of operations conducted on the outer continental shelf.'" Pet. App. 27.[6]

---

[6] Commentators have roundly criticized the *Mills* decision for its departure from the statutory terms and sound past precedent interpreting and applying them, and its application of the different terms of § 1333(a)(2)(A) to the scope of § 1333(b). *See, e.g.*, Thomas J. Schoenbaum, 1 ADMIRALTY AND MARITIME LAW § 3-9, at 396 (3d ed. & pocket part) (*Mills* "go[es] against the plain language of section 1333(b) [which] has no situs requirement," but *Mills* and the subsequent revision of its "test" in *Demette v. Falcon Drilling Co.*, 280 F.3d 492 (5th Cir. 2001), "completely re-interpreted the law regarding operations on the outer continental shelf and the relationship of the LHWCA and the OCS Lands Act."); David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 26 TUL. MAR. L. J. 193, 246 n.505 (2001) ("The notion that § 1333(b) . . . has the same 'situs' criteria as § 1333(a)(1) is challenged by the language of § 1333(b)[.]"); Joseph M. Perez, *Case Note, To Be or Not to Be, a Situs Requirement Under the Outer Continental Shelf Lands Act: Mills v. Director, Office of Worker's Compensation Programs*, 12 GEO. MASON U. L. REV. 383

B. Prematurity in the Present Case

Although the consideration does not affect this Court's *jurisdiction*, it is surely a strong prudential consideration with respect to this Court's exercise of its scarce *certiorari* authority that the question on

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(1990) (analyzing *Mills*'s novel imposition of a situs-of-injury requirement on § 1333(b) coverage).

Indeed, even since *Mills*, the Fifth Circuit has noted that the

> . . . legislative history [of the original passage of OCSLA] stat[es] that the phrase "waters above the [OCS]" was deleted from the situs requirement of what became section 1333(b) in order "to make more definite the application of the [LHWCA] to workers other than those employed on vessels." SEN. REP. NO. 411, 83D CONG., 1ST SESS. 16, 23 (1953). . . . [T]he situs requirement that this deletion left behind was later deleted, *leaving no situs requirement in the enacted version of that subsection*. As noted above, section 1333(b) contains only a status requirement.

Demette v. Falcon Drilling Co., 280 F.3d 492, 500 n.29 (5th Cir. 2002) (emphasis added). Ironically, the court there parsed the subtle differences in the terms of different parts of § 1333(a), ruling that it must "give effect to the different wording of the two phrases by reading them differently," *id.* at 498. That approach is hardly consistent with the fact that *Mills*, as *Demette* recognized, had held that "in order for the LHWCA to apply by virtue of Section 1333(b), . . . the injured worker must satisfy the 'status' requirement of Section 1333(b) *as well as the situs requirement of Section 1333(a)(1)*," *id.* (emphasis added), thereby *denying* effect to the fact that the terms of § 1333(b) *do not impose any* "situs requirement" other than that applicable to the mineral-extraction "operations" to which the work must pertain. *And compare* § 1333(b) (no reference to injury "occurring upon" covered platform) *with* § 1333(c) (making National Labor Relations Act applicable to "[a]ny unfair labor practice *occurring upon* any artificial island, installation, or other device referred to in subsection (a)"). *Demette* only emphasizes the inconsistency between *Mills* and the statute.

which the circuits are divided may not even determine the outcome of this case. The administrative tribunals, because they relied on the *Mills* situs-of-injury requirement to deny the claim, have not addressed its satisfaction of the "result of operations on the [OCS]" test that everyone agrees is required for application of the Longshore Act under § 1333(b). The court of appeals did not do so either; it merely provided a measure of guidance on the proper approach to that requirement as a "substantial nexus" test, and remanded the case for consideration of the question. The scope and consequent effect on this case of the court of appeals's intended "nexus" test thus remains for determination on (and no doubt after) remand to the ALJ; if it were resolved against the claimant, the issue Petitioners seek to present would be moot in this case. There is thus a chance – which Petitioners would no doubt characterize as at least serious – that the issue will not even be outcome-determinative of Respondent Valladolid's claim. Even if the situs-of-injury-requirement issue is otherwise appropriate for resolution by this Court, the Court should not entertain it in this case until and unless further proceedings establish that it makes a difference to the outcome.

C. Limited Impact of the Conflict

The extremely limited impact of the intercircuit conflict whose resolution Petitioners seek further counsels against issuance of the writ. The overwhelming majority of the OCS oil and gas exploration and extraction activity for over half a century has occurred offshore of Louisiana and Texas, both within the jurisdiction of the Fifth Circuit. Only two cases presenting the question, over twenty years apart, have reached any court of appeals other than

that circuit. Al-though political winds appeared to be shifting in the direction of opening up such activity on other coastlines until last April, the *Deepwater Horizon* tragedy now seems to have stalled that shift, and it would be speculative to expect any such expansion of operations covered by the Lands Act outside its established scope within Fifth Circuit jurisdiction within the foreseeable future. Even within the Fifth Circuit itself, the issue rarely arises, almost exclusively in the context of helicopter or crewboat casualties on the way between offshore platforms and the coast; the coastal-rig-construction context presented by *Mills* itself, while it may once have had broader application, has decreased in importance as most platform-construction work has shifted from the West Gulf Coast to East and Southeast Asia. Petitioners do not elaborate at all on their naked characterization of the question as an "important" one (Pet. 8). The question on which the conflict exists arises too infrequently outside the Fifth Circuit, or even, so far as appears, within it, to warrant this Court's attention.

II. The Conflict Asserted by Petitioners Concerning the Content of the "Result of Operations" Requirement, Which All Agree Is a Condition for Application of the Longshore Act Under Its Extension by OCSLA, Is Illusory and, If It Exists at All, Insufficiently Developed to Warrant This Court's Review.

Petitioners' assertion of a further three-way conflict on the meaning of the "result of [OCS] operations" requirement, Pet. i, 8-10, is baseless. It depends on a mischaracterization of the Third Circuit's decision in *Curtis* as having "h[e]ld" that "[w]hen an [OCS] worker is injured *on land*, . . . he (or his heir)

[is] *always* eligible for compensation, because his employer's operations on the shelf are the but for cause of his injury." Pet. I (emphasis by Petitioners); *cf.* Pet 8-9. In fact, the Fifth Circuit early adopted what it denominated the "but for" test for satisfaction of the "occurring as the result of operations on the [OCS]" requirement that all agree is either *the* or *one of the two* requirements for application of § 1333(b); that court's panel decision in *Mills* (quoted more fully at p.8 *supra*) "clarified" that the "'but for' test" "is not the simple '*causa sine qua non*' test of tort law," but a "nexus" test that "requires that the work 'further[s] the operation of a fixed rig on the shelf *and [is] in the regular course of extractive operations on the shelf.*'" Except in that decision finding the test satisfied by platform-construction work in a shipyard (vacated by the grant of rehearing *en banc*), the Fifth Circuit has held it satisfied only by injuries in the course of travel to and from OCS platforms. The Third Circuit in *Curtis* adopted the "but for" test for the "result of operations" requirement *as articulated in Fifth Circuit law*, finding it satisfied *in that same context*, without further elaboration. The Ninth Circuit in the decision below adopted the same "substantial nexus" test, in terms plainly contemplating (because its focus is on the "work performed") that it would similarly be satisfied by injuries in the course of such travel to and from platforms, and "le[ft] more precise line-drawing to the specific factual circumstances of [particular] cases." Pet. App. 28. It "decline[d] to adopt[] the Third Circuit's decision in *Curtis*" only "to the extent *that it requires only a 'but for' test of causation.*" *Ibid.*

There is no indication in any of the circuits' law that they would disagree with the proposition that injuries in the course of OCS workers' travel to or from OCS platforms satisfy the relevant test, nor that any of

them would apply a loose "*causa sine qua non*" standard that would apply the provision to those whose work bears only a remote connection to OCS "operations." Whether the circuits might develop a disagreement in the course of "more precise line-drawing," and whether any such disagreement might be sufficiently significant to warrant resolution by this Court, are presently unknowable. Such "precise line-drawing" is certainly an unwarranted task for this Court in advance of further development of the content of the requirement in the courts of appeals and the emergence of a significant conflict affecting some substantial number of cases.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be denied.

Respectfully submitted,

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REPLY BRIEF

RECORD
AND
BRIEFS

No. 10-507

In The
Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP,
and INSURANCE COMPANY OF
THE STATE OF PENNSYLVANIA,

Petitioners,

v.

LUISA L. VALLADOLID,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

1. One of the primary purposes of certiorari jurisdiction is to resolve conflicts among the circuits on issues of federal law. *See, e.g., Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 657 (2006). Respondent the Director, Office of Workers' Compensation Programs acknowledges that such a conflict exists here. (*See* Director's Opp'n at 11.) "There is a conflict between the Ninth and Third Circuits, on the one hand, and the Fifth Circuit, on the other, on the question of whether the OCSLA extends the Longshore Act only to injuries incurred within the geographic situs of the OCS." (*Id.*)

In fact, as we explained in our petition, the Court of Appeals' decision here creates a three-way circuit split. The Third Circuit held that an employee injured on land is entitled to benefits if he would not have been injured "but for" his employment on the outer continental shelf. *See Curtis v. Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 809 (3d Cir. 1988). The Fifth Circuit, adopting a situs test, held that a worker is not entitled to benefits unless the injury occurs on the outer continental shelf. *Mills v. Dir., Office of Workers' Comp. Programs, U.S. Dep't of Labor*, 877 F.2d 356 (5th Cir. 1989). The Ninth Circuit – rejecting both the Third Circuit's "but for" test and the Fifth Circuit's situs test – instead requires a claimant to "establish a substantial nexus between the injury and extractive operations on the shelf." *Valladolid v. Pac. Operations Offshore, LLP*, 604 F.3d 1126, 1139 (9th Cir. 2010).

2. This three-way circuit conflict concerns an important issue to boot. Until it is resolved by this

Court, whether an offshore platform worker injured on land is entitled to OCSLA benefits depends on the circuit in which the claim arises, an intolerable situation. *See Comm'r of Internal Revenue v. Bilder Ex'x*, 369 U.S. 499, 501 (1962) (granting certiorari due to "the need for a uniform rule on the point").

Respondent Valladolid contends the question is not important because it rarely arises. For that proposition, she relies only on the fact that few court of appeals decisions have addressed the question. (*See* Valladolid Opp'n at 14-15.) However, once the Third Circuit in *Curtis* and the Fifth Circuit in *Mills* (in an en banc decision) established the law in their respective circuits, neither court had cause to revisit the question. Both decisions adopted bright line rules that can easily be applied by administrative law judges. Because the law in each circuit is clear, litigants who lose before an administrative tribunal have little incentive to seek review in the Court of Appeals. Consequently, the absence of subsequent circuit court opinions says nothing about the frequency with which OCS workers are injured on land. Valladolid offers no support for her implicit assertion that OCS workers rarely are called upon to also perform work at their employers' onshore facilities.

3. This important issue should be resolved now, not after further proceedings. "[T]he power of this court in certiorari extends to every case pending in the Circuit Courts of Appeal, and may be exercised at any time during such pendency. . . ." *Forsyth v. Hammond*, 166 U.S. 506, 514 (1897). "[W]here . . .

there is some important and clear-cut issue of law that is fundamental to the further conduct of the case and that would otherwise qualify as a basis for certiorari, the case may be reviewed despite its interlocutory status. . . ." Eugene Gressman et al., Supreme Court Practice 281 (9th ed. 2007). Consequently, "[i]n a wide range of cases, certiorari has been granted after a court of appeals has disposed of an appeal from a final judgment on terms that require further action in the district court, so that there is no longer any final judgment." 17 Charles A. Wright et al., Federal Practice & Procedure § 4036 (3d ed. 2007).

Despite a three-way circuit conflict on an important question of federal law, the Director and Valladolid urge that certiorari is not warranted because the Ninth Circuit in this case remanded to the agency to determine petitioner's entitlement to benefits under its "substantial nexus" test. According to the Director, "the case is currently in an interlocutory posture" (Director's Opp'n at 8), and "[a]llowing the agency and the court of appeals an opportunity to apply the newly announced 'substantial nexus' test may clarify the test's contours and provide a more concrete dispute to review." (*Id.* at 12.)

But nothing that the agency might decide on remand will eliminate what even the Director acknowledges is a split between the Third and Ninth Circuits, on the one hand, and the Fifth Circuit on the other. The Director urges that the conflict between the decision below and the Third Circuit's "but for" test may be "illusory" and that it is "possible that

the Third and Ninth Circuit tests will converge." (Director's Opp'n at 13, n.9.) Even if they do, at best there will still be a two-way circuit split regarding the entitlement of an OCS worker injured on land to OCSLA benefits.

Moreover, the Director's own brief casts doubt on the likelihood the Third and Ninth Circuits' tests will converge. He acknowledges that the Ninth Circuit's "substantial nexus" test, unlike the Third Circuit's test, requires "a fact-based inquiry focused on the particulars of a given injury." (Director's Opp'n at 16.) Therefore, according to the Director, the test lacks "predictability" and, contrary to Congress's intent, "could prove overly inclusive in that it might extend coverage to workers who do not perform any work on the OCS itself." (*Id.* at 15.) Consequently, the Director urges this court to adopt yet a fourth test: an injury is compensable, no matter where it occurs, if there is "a nexus between OCS operations and the employee's 'work performed' generally." (*Id.* at 14.) The additional uncertainty in this already muddled area of the law introduced by yet a fourth test confirms the need for certiorari review now.

And, no matter what happens on remand, this Court will receive another certiorari petition. If Valladolid prevails before the agency, petitioners will file a petition raising the same issue presented by their current petition. If petitioners prevail, Valladolid will undoubtedly seek certiorari and urge this Court to adopt the Third Circuit's test from *Curtis*.

4. Finally, Valladolid appears to contend that even the conflict between the Third Circuit's test in *Curtis* and the Fifth Circuit's test in *Mills* is illusory. She suggests both circuits would hold that an OCS worker travelling to or from OCS platforms is entitled to OCSLA benefits and thus both courts would reach similar results on similar facts. (Valladolid Opp'n at 15-17.) That contention fails. Expressly acknowledging the contrary holding in *Curtis*, the Fifth Circuit in *Mills* rejected an interpretation of 43 U.S.C. § 1333(b) that would extend "LHWCA benefits to oilfield workers injured on land or state territorial waters." *Mills*, 877 F.2d at 361-62.

CONCLUSION

No good reason exists for waiting to grant a writ of certiorari. This case presents an important question that has divided the circuits, and the division would persist no matter how the agency resolved outstanding matters on remand. A worker's eligibility for OCSLA benefits should not depend on the circuit in which his injury occurs.

For the foregoing reasons and the reasons set forth in our petition, the petition for writ of certiorari should be granted.

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JOINT APPENDIX

Supreme Court, U.S.
FILED
MAY 23 2011
OFFICE OF THE CLERK

No. 10-507

In The Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,

Petitioners,

v.

LUISA L. VALLADOLID, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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Petition For Writ Of Certiorari Filed October 13, 2010
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United States Court of Appeals
for the Ninth Circuit
Case No. 08-73862

Luisa Valladolid v. Pacific Operations Offshore, et al.

Date Filed	No.	Docket Text
09/09/2008	1	FILED PETITION FOR REVIEW. DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. NOTIFIED RESPONDENTS OF FILING. SEND CADS: No. Petitioner brief due 10/20/2008 for Luisa L. Valladolid. Respondent brief due 11/18/2008 for Director, Office of Workers' Compensation Programs, United States Department of Labor, Insurance Company of the State of Pennsylvania and Pacific Operations Offshore, LLP. Petitioner's optional reply brief is due 14 days after service of the answering brief. (HC)
		* * *
11/24/2008	9	Received original and 15 copies of Petitioner Luisa L. Valladolid brief (Informal: No) 43 pages. Excerpts of record in 1 volumes [sic]. Served on 11/21/2008. Deficiency: Motion pending. Other deficiency: LATE, MOTION TO BE FILE LATE COMING. (FT)
		* * *

02/12/2009	14	Filed order (Appellate Commissioner) The motion to dismiss and to impose sanctions for failure to timely file the opening brief is denied. Petitioner's motion for leave to file the opening brief late is granted. The Clerk shall file the opening brief received November 24, 2008. The motion to delay the filing of the answering brief is denied as unnecessary. The answering briefs are due March 19, 2009; and the optional reply brief is due 14 days after service of the answering brief. All parties on a side are encouraged to join in a single brief to the greatest extent practicable. (MOATT) (SC)
		* * *
03/18/2009	18	Filed clerk order: Answering Brief [17] filed by Insurance Company of the State of Pennsylvania and Pacific Operations Offshore, LLP in 08-73862. Within 5 working days of the filing of this order, filer is ordered to file 10 copies of the brief in paper format, with a Red cover, accompanied by certification that the brief is identical to the version submitted electronically. (LA)
03/18/2009	19	Filed Respondents Insurance Company of the State of Pennsylvania and Pacific Operations Offshore, LLP supplemental excerpts of record on appeal in 1 volume. (LA)

03/20/2009	20	Received 10 paper copies of Answering brief [17] filed by Insurance Company of the State of Pennsylvania and Pacific Operations Offshore,, LLP in 08-73862. One copy to Case Files, the remainder to Records. (LA)
		* * *
05/04/2009	25	Filed clerk order: Reply Brief [24] filed by Luisa L. Valladolid. Within 5 working days of the filing of this order, filer is ordered to file 10 copies of the brief in paper format, with a Grey cover, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. (LA)
05/14/2009	26	Received 10 paper copies of Reply brief [24] filed by Luisa L. Valladolid in 08-73862. One copy to Case Files, the remainder to Records. (RY)
		* * *
05/13/2010	34	FILED OPINION (STEPHEN R. REINHARDT, JAY S. BYBEE and JAMES V. SELNA) GRANTED IN PART; DENIED IN PART; REMANDED. Each party shall bear its own costs on appeal. Judge: SR, Judge: JSB, Judge: JVS Authoring. FILED AND ENTERED JUDGMENT. [7335809] (PH)
		* * *

06/03/2010	37	Filed (ECF) Respondents Insurance Company of the State of Pennsylvania and Pacific Operations Offshore, LLP petition for rehearing en banc (from 05/13/2010 opinion). Date of service: 06/03/2010. [7359092] (MWT)
07/19/2010	38	Filed order (STEPHEN R. REINHARDT, JAY S. BYBEE and JAMES V. SELNA): Judges Reinhardt and Bybee have voted to deny rehearing en banc, and Judge Selna recommends denial of rehearing en banc. The full court has been advised of the Respondents' petition for rehearing en banc, filed June 3, 2010, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition is DENIED. No further petitions shall be entertained. [7409788] (AF)

* * *

Claim for Death Benefits

U.S. Department of Labor [LOGO]
Employment Standards Administration
Office of Workers' Compensation Program

1. Name of deceased employee (First, middle initial, last) Juan J. Valladolid	[Illegible]	OWCP Number 18-83701	Carrier's Number	OMB No. 1215-0160
a. Social Security Number (Required by Law) [Social Security Number Omitted]				

2. Last address of deceased (Number, street, city, state, ZIP) [Home Address Omitted]	8. Place of death (City, State) Carpinteria, California	9. Date of death (Mo., day, yr.) 6-2-2004
3. Name and address of employer (Number, street, city, state, ZIP) Pacific Operators Offshore 205 E. Carrillo Street Suite 200 Santa Barbara CA 93101	10. Place where injury occurred (Exact location, city, state) 7459 W. Pacific Coast. Hwy Ventura, CA 93001	11. Date of injury (Mo., day, yr) –
4. Name and address of undertaker All Souls Cemetery & Mausoleum 440 Cherry Avenue, Long Beach, CA 90807	12. Nature of injury or occupational illness and cause of death (Give parts of body affected if injured) Chest area Crushed, having been run over by a Fork lift. Causing death.	
5. Amount of undertaker's bill $9,232.92 / 6. Amount Paid $9,232.92	13. Name and address of last attending physician (or hospital) Ventura County Medical Examiner: Craig Stev 3291 Loma Vista Road Ventura California	
7. Name of person paying undertaker's bill Luisa Valladolid		

14. Widow or Widower

a. Full name and address	b. Social Security Number (Required by Law)	c. Date of birth	d. Citizen
Luisa Valladolid [Home Address Omitted]	[Social Security Number Omitted]	[Date of Birth Omitted]	USA

e. Date married to deceased	f. Place of marriage (City, State, Country)	g. Signature of widow, widower, and/or guardian of children	Date
11-04-1972	Wilmington CA USA	/s/ Luisa Valladolid	7-22-04

15. Children of deceased (see reverse for qualification)

a. Full name	b. Address	c. Social Security Number (Required by Law)	d. Date of birth	e. Citizenship

16. All other persons partially or wholly dependent on deceased for support (See reverse for qualification)

	b. Income for one year preceding death		c. Relationship	d. Age	e. Dependent	
	Source	Amount			Wholly	Partially
Full name and address						
Signature Date						

Guardian?						
Full name and address Signature Date						
Guardian?						
Full name and address Signature Date						
Guardian?						

Form Replaces Form LS-263 which is Obsolete

Form LS-262
Rev. Mar. 1994

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PACIFIC OPERATORS OFFSHORE, LLP
and INSURANCE COMPANY OF
THE STATE OF PENNSYLVANIA,
Adjusted by AIG CLAIM SERVICES, INC.

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

LUISA L. VALLADOLID, Claimant, v. PACIFIC OPERATORS OFFSHORE, LLP, Employer, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA adjusted by AIG CLAIM SERVICES, INC., Administrator.	OALJ Case No: 2005-LHC-00343 OWCP Case No: 18-83701 **DECLARATION OF CLEMENT M. ALBERTS IN SUPPORT OF MOTION FOR SUMMARY DECISION** 29 C.F.R. § 18.40; F.R.C.P. 56

I, Clement M. Alberts, declare as follows:

1. Since 1987, I have been employed by Pacific Operators Offshore, LLP in the capacity of

Environmental Coordinator. Pacific Operators Offshore, LLP is a company whose primary business operations include oil exploration and extraction. The business operations at its plant facility located at 7459 Pacific Coast Highway, Ventura, CA consisted of the intake of crude oil from offshore platforms via pipeline, the separation of water from the crude oil, the purification of the separated water, and the temporary storage of crude oil in tanks.

2. My responsibilities as Environmental Coordinator with Pacific Operators Offshore, LLP include management of all environmental issues as they pertain to regulatory compliance and associated engineering issues in regard to air, water and land quality. I am also responsible for record keeping and documentation submission to agencies possessing regulatory oversight. These primarily include the Santa Barbara County Air Pollution Control District, the Ventura County Air Pollution Control District, The US EPA, US DOT, and US Coast Guard. Aside and apart from these primary environmental responsibilities, I am additionally responsible for maintenance of mandated oil spill contingency plans, workers' compensation claims, accident investigation, associated legal issues and new hire compliance with Department of Transportation ("DOT") regulations pertaining to verification and documentation of employee citizenship. I also am the lead contact in safety related issues. I also am responsible for royalty reporting to the US Minerals Management Service as it relates to reservoir management. I report directly to the Operations

Superintendent and to the President of Pacific Operators Offshore, LLP.

3. I have personal and first hand knowledge of the matters stated herein, and if called upon to testify to said matters under oath, I could and would so testify.

4. On June 2, 2004, decedent Juan J. Valladolid was employed by Pacific Operators Offshore, LLP (hereinafter "Employer") as a "Roustabout" and was assigned to Employer's crude oil flocculation plant facility located at 7459 Pacific Coast Highway, Ventura, CA. This location is known as Employer's "La Conchita" plant.

5. Decedent's job duties with Employer primarily involved performing maintenance and repair duties at Platform Hogan, located in the Pacific Ocean on the Outer Continental Shelf. I am familiar with and understand the meaning of the term "Outer Continental Shelf" and can state that Platform Hogan was located on the Outer Continental Shelf. Platform Hogan is located more than three miles off the coast of California and is affixed to the ocean floor. Decedent would access Platform Hogan by boarding a crew boat at Casitas Pass Pier. Casitas Pass Pier is located approximately three miles from the La Conchita plant facility.

6. Decedent's duties also included working at the onshore La Conchita plant, where he would perform various maintenance and clean-up duties.

7. I personally conducted the investigation of decedent's accident and prepared a report of that investigation. A true and correct copy of my accident report dated is attached hereto as Exhibit 1. My investigation revealed that on June 2, 2004, decedent Juan J. Valladolid was assigned to work at the employer's La Conchita plant. At approximately 4:00 p.m. on that date, decedent was directed by Gordon "Scoop" Boswell to go to the rear yard of the plant with a forklift and to clean up some debris. At approximately 5:15 p.m. on the same date, claimant was found next to a plantain tree approximately ten feet off of one of the plant facility service roads. He was lying on his back with a forklift resting on his abdominal and chest area. He was pronounced dead at the scene.

8. Decedent's accident also was investigated by the Ventura County Coroner's Office. A true and correct copy of the Summary of Investigation by the Ventura County Coroner's Office is attached hereto as Exhibit 2.

9. Decedent's accident also was investigated by California OSHA. A true and correct copy of the Cal OSHA Notice of No Violation After Inspection dated July 6, 2004 is attached hereto as Exhibit 3.

10. The accident resulting in decedent's death occurred adjacent to a service road within the employer's "La Conchita" plant facility. The accident was not witnessed. The accident investigation revealed that he apparently was using the forklift to assist

him in picking plaintains. Evidence at the scene of the accident indicated that decedent had pulled the forklift off of the service road, that he had been standing on the elevated tines of the forklift in order to cut a stalk of plaintains from a plantain tree, and that he had somehow fallen in front of the forklift and was run over by it. The harvesting of plaintains along the service roads in the La Conchita plant were not related to decedent's employment duties with Employer.

11. The location of the accident was approximately ten feet off of the service road connecting the La Conchita plant main facility area to the rear yard of the plant.

12. The La Conchita plant, and the accident scene specifically, were separated from the Pacific Ocean by railroad tracks, a highway and a beach. It is not over or contiguous with any body of water and does not possess any area to unload materials from a dock, barge, floating platform, floating island, ship or other type of vessel.

13. The La Conchita plant does not possess any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or any other area used at any time for the loading, unloading, repairing, dismantling, or building of any marine vessel. The nearest sea-port is Port Hueneme, located approximately 16 miles from the La Conchita plant.

14. Attached hereto as Exhibit 4 is an aerial photograph depicting the La Conchita plant. This

photograph accurately represents the geography of the plant in relation to the Pacific Ocean at the time of decedent's accident. Decedent's fatal accident occurred within in [sic] the plant facility as depicted in the photograph.

15. The operations at the La Conchita plant, during the tenure of decedent's employment there, never involved the loading or unloading of anything to or from any marine vessel, and never involved the repair of any marine vessel. The crude oil was received into the plant via pipeline from an offshore platform and was processed and stored in temporary storage tanks before being transported away from the plant by pipeline.

16. The accident resulting in decedent's death did not occur on or over the Outer Continental Shelf.

17. The accident resulting in decedent's death did not occur in the course of traveling to or from the Outer Continental Shelf or anything on or over the Outer Continental Shelf.

18. There are no businesses engaged in shipping operations or other maritime activities within at least a one-mile radius of the La Conchita plant. The nearest business is a combination gas station/convenience store which is located approximately one-half mile from the La Conchita plant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17TH day of August, 2006, at CARPINTERIA, CA

/s/ Clement M. Alberts
CLEMENT M. ALBERTS

EXHIBIT 1 TO DECLARATION
OF CLEMENT M. ALBERTS

071-084356

ACCIDENT INVESTIGAION [sic] REPORT

DRAFT

Date of Report:	06/03/04
Date of Accident:	06/02/04
Decedent:	Juan Valladolid
Date of Birth:	[Omitted In Printing]
SSN:	[Omitted In Printing]
Spouse:	Luisa Valladolid
Date of Birth:	[Omitted In Printing]
SSN:	[Omitted In Printing]
Minor Dependants:	NA
Home Address:	[Omitted In Printing]
Home Telephone:	[Omitted In Printing]
Report Author:	Clement M. Alberts, POOI

Investigative Narrative

Mr. "Scoop" (Gordon) Boswell, Plant Supervisor, related that he directed Mr. Juan Valladolid to go to the rear yard with the forklift and clean up trash in that area at about 4pm. Mr. Boswell did not see

Mr. Valladolid again until he discovered the accident scene at approximately 5:15pm. It appears that Mr. Valladolid drove the forklift on the road leading to the rear yard at which time he observed a fruit laden tree off the south side of the roadway. It appears that Mr. Valladolid then decided to harvest this fruit. In that the fruit was located at a height of approximately 15 feet off the ground, Mr. Valladolid turned and positioned the forklift so as to direct the forklift tines into a southwesterly facing position, i.e. facing the tree. Tire marks on the roadway seem to evidence that Mr. Valladolid desired to take this action prior to performing the task he was assigned to perform. It then appears that Mr. Valladolid raised the tines of the forklift to approximately "shoulder height". The height of the tines, as initially discovered, was confirmed by Mr. Gabriele of the VCFD and Mr. Boswell. It appears that Mr. Valladolid then climbed up the frame of the fork carrier and positioned himself either astride both tines, or more likely on one tine as the tines were set approximately five feet apart. Mr. Valladolid then utilized a pocketknife to cut the stem of the fruit he wished to harvest. The stem as found evidenced that the Mr. Valladolid competed [sic] this cut. It was apparently at this instant that an as of yet unexplained action took place. From resultant circumstances and observations, it appears that the forklift initiated a forward rolling motion that caused Mr. Valladolid to lose his balance, drop the fruit he was holding, and to ultimately to fall from his position. It appears that Mr. Valladolid fell to the ground in front of the advancing forklift. At this point in

time, the front left wheel of the forklift rolled onto the lower thoracic portion of Mr. Valladolid's body causing immediate massive internal injury and ultimately death.

Supplemental Information

Mr. Boswell related that he discovered Mr. Valladolid's body at 5:15pm and further related, to the best of his recollection, that the forklift engine was running, it's [sic] brake was set at this time, and that he had not attempted to move the forklift until so requested by VCFD. It should be noted that Mr. Boswell was extremely upset and that he was initially not of a state of mind sufficient to recall or to accurately correlate these events. However, all evidence indicates that Mr. Boswell's recollections represent an accurate account. Mr. Boswell related that he immediately contacted 911 for assistance. VCFD responded to the scene as did the Ventura County Sheriff's Department (VCSO). Mr. Boswell was requested by VCFD to move the forklift back. Mr. Boswell was later asked if the brake worked properly. It was later determined that brake was apparently functioning properly. However, the forklift has been impounded pending further investigation.

Due to the unusual circumstances of this accident, the accident scene and investigation was initially treated by VCSO as a homicide. A final determination that this was in fact an industrial accident was made via VCSO's subsequent investigation.

The accident scene was located approximately ten feet off the service road connecting the La Conchita Plant main facility area to the rear yard area and approximately fifty feet west of the centerline of the gully located near the general opening to the rear yard area and adjacent to the fire water monitor (refer to attached photographs).

The forklift tines were set at about "shoulder height" according to Paramedic on scene (Geovoni Gabriele, VCFD). He related that the front left wheel was on thoracic portion of body of the patient upon arrival. Patient was cyanotic, eyes fixed and dilated, and was unresponsive to the administration of CPR. VCFD also related that position of the body was essentially the same as when first discovered. Patient was rolled on to his back in order to administer emergency medical assistance.

OSHA was contacted by both VCFD as well as POOI. POOI is actively involved in the follow up investigation of the unexplained apparent failure of the forklift to maintain its position.

The forklift is a rental vehicle and is currently impounded. Registered owner and impound information is as follows:

Registered Owner	*Storage Concern*
Sun Coast Rentals	Goldline Tow
4745 Carpinteria Ave.	1334 Callens Road
Carpinteria CA	Ventura CA
(805) 684-4173	(805) 659-9701

EXHIBIT 2 TO DECLARATION
OF CLEMENT M. ALBERTS

06-18-2004 WED – 07:31 PA.

[SEAL]

Medical Examiner – Coroner
Ventura County
State of California

DEATH INVESTIGATION REPORT
Case Number: 01245-04

Decedent Name:	Juan Jose Valladolid
Also Known As:	
Residence:	[Omitted In Printing]
Place of Death:	Industrial yard
Manner of Death:	Accident
Cause of Death:	asphyxia by abdominal and chest compression
Due to:	
Due to:	
Due to:	
Other Significant Conditions:	none
Date of Birth:	[Omitted In Printing]
Age:	54
Death Date:	06/02/2004
Death Time:	17:27:00
Property:	Yes
Autopsy by:	Dr. Frank
Investigator:	Craig Stevens

SUMMARY OF INVESTIGATION

On 6/2/2004, at about 1845 hours, Sgt. T. Lorenzen from the Ventura County Sheriff's Department contacted

me. He reported the death of Juan Jose Valladolid, age 54. He advised that the decedent had been working at an equipment yard owned by Pacific Operators Offshore, and was found by co-workers with a forklift resting on the body. I responded to the scene at about 1900 hours and arrived at about 1940 hours.

At the scene, I spoke to Sgt. G. Hess from the Ventura County Sheriff's Department who related the following information based on the preliminary investigation. The decedent was last seen alive at about 1600 hours by co-workers. The decedent is a "roustabout" with the company and was moving and staging equipment in the yard. At about 1700 hours, a yard supervisor saw a forklift parked off of the service road near a row of banana trees. The supervisor approached the forklift and heard the motor running. He discovered that the left front, dual tires were sitting on top of the decedent's abdominal area. He summoned emergency medical personnel and assisted them in moving the forklift off of the decedent. The decedent was pronounced at the scene by paramedics from the Carpenteria Fire Department at about 1727 hours.

Sgt. Hess stated that when found, the forks of the forklift were raised and there was a stalk of bananas hanging over the rear guard fence. On the ground, was an open folding knife. The decedent had an empty knife sheath on his belt. The size of the knife when folded was consistent with the size of the sheath. Sgt. Hess stated that he had been told that

when found, the motor of the forklift was running and the parking brake was engaged.

Sgt. Hess stated that it appeared that the decedent had been using the raised forks to reach the stalk of bananas, and fell from the forks. It is not known at this time as to how the forklift moved forward onto the decedent. He stated that Cal-OSHA had been notified of the incident and had requested that the forklift be impounded for later inspection. Cal-OSHA personnel would not be responding to the scene.

After photographing the scene, I examined the decedent. The body was that of a Hispanic male adult whose appearance was younger looking than the stated age of 54 years. The body was supine on the ground, lying on a backboard. The body was warm to the touch and was absent of rigor. Mild blanching lividity was present and consistent with the position of the body.

The decedent's clothing had been cut away from the body by emergency medical personnel. The clothing consisted of a brown T-shirt, blue pants with a brown belt and the empty knife sheath, blue and white striped boxer-type undershorts, white socks and brown work-style boots.

Evidence of medical treatment included an endotracheal tube and EKG monitor pads on the upper chest and left side of the abdomen.

The most visible trauma consisted of tire imprint marks acrossed the abdomen, which matched the treads on the forklift.

The decedent is transported to the Ventura County Medical Examiner's Office by Cathedral Mortuary Associates pending a review of the case with the Medical Examiner.

I spoke to Mr. Bruce Johnson, Operations Superintendent for Pacific Operators Offshore. He stated that the decedent's wife and family lived in the Long Beach area. He requested that company representatives be allowed to make personal notification of the family. I explained to him the procedures that would follow and allowed the company to make the notification.

On 6/3/2004, I reviewed the case with Janice G. Frank, M.D., the Assistant Medical Examiner for the County of Ventura. She advised that an autopsy would be conducted. At the conclusion of the procedure, Dr. Frank advised that the cause of death was asphyxia by abdominal and chest compression. The manner of death is ruled an accident.

The body was released to the All Souls Mortuary in Long Beach at the request of the family.

Signature: Craig L. Stevens
Craig Stevens, Deputy Medical Examiner

EXHIBIT 3 TO DECLARATION
OF CLEMENT M. ALBERTS

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

Office: **Cal/OSHA – Van Nuys**
6150 Van Nuys Blvd., Suite 405
Van Nuys, CA 91401
(818)901-5403

NOTICE OF NO VIOLATION AFTER INSPECTION

Pacific Operators Offshore
205 E Carrillo St., # 200
Santa Barbara, CA 93101

inspection was conducted by **Donald C Jackson** at a place of employment located at **7459 Pacific Coast Hwy, Ventura Co., 06/03/2004**. This inspection was initiated by any or all of the following reasons: complaint, follow-up, referral, planned.

Description of area(s) inspected:
Accident site located at 7459 Pacific Coast Hwy,
Ventura County, Ca.,
This facility is a oil and gas production plant.
The accident occurred along side the road near the
banana tree. This was the accident investigation
location.

Signature: [Illegible]
Safety Engineer/Industrial Hygienist

Signature: _____
District Manager/Senior Industrial Hygienist

Date of Issuance: 7-6-04

Date Inspection Completed: 7-6-04

Said inspection was completed on . It has been determined that no violation of any standard, rule, order or regulation set forth in Title 8, California Code of Regulations and Division 5 of the California Labor Code has been found as a result of this inspection.

This notice relates solely and exclusively to the inspection on the above date, which was not necessarily a comprehensive inspection of the worksite. Due to the transitory nature of worksite conditions, violations can occur occasionally or routinely and may be undetected by any given inspection. This notice does not preclude the issuance of citations on any future inspection.

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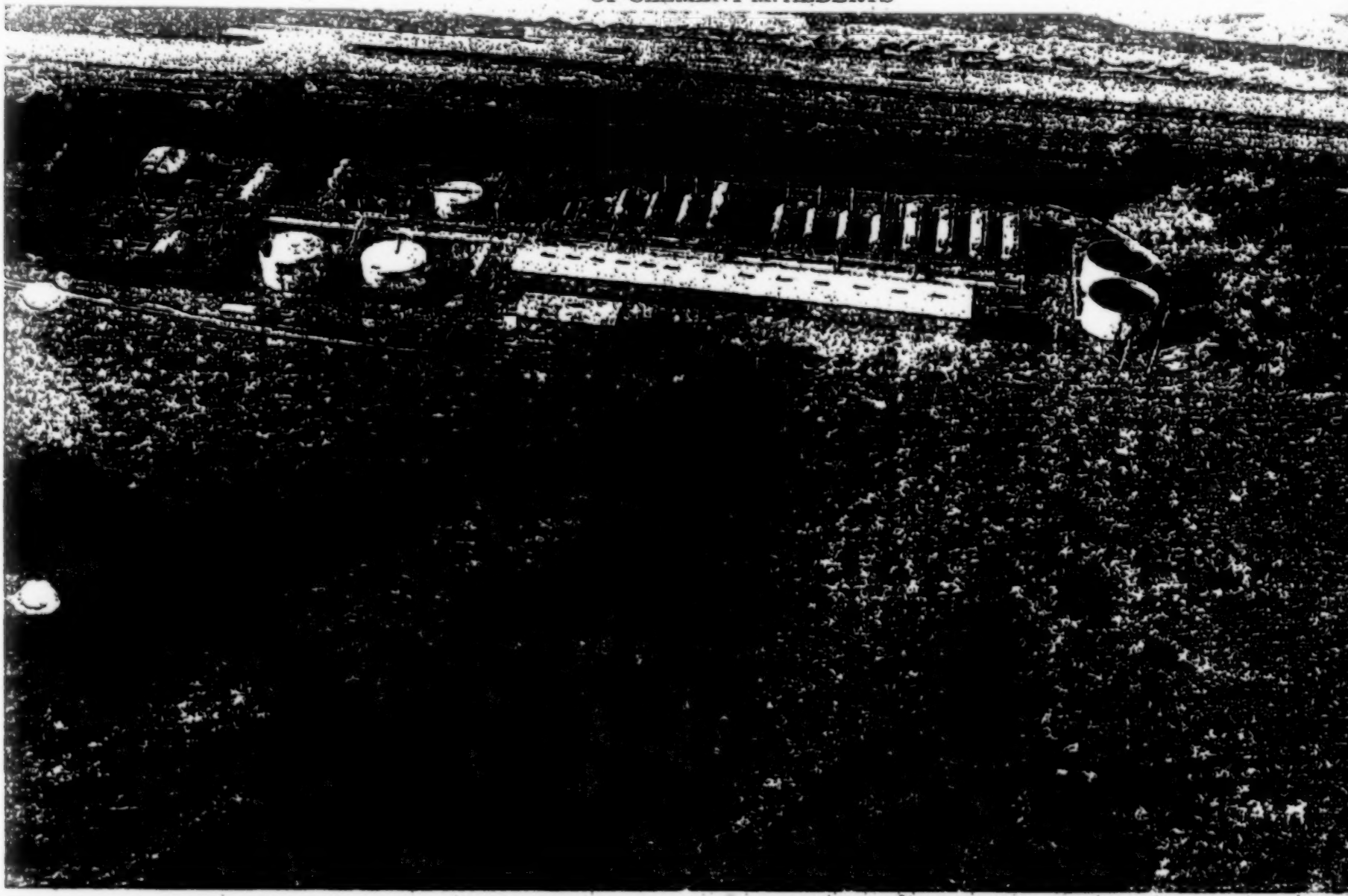
Region	District	SE/IH Identification No.	Optional Report No.	Cal/OSHA Form 1 Report No.

EXHIBIT 4 TO DECLARATION
OF CLEMENT M. ALBERTS



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Attorneys for Defendants
PACIFIC OPERATORS OFFSHORE, LLP
and INSURANCE COMPANY OF THE STATE
OF PENNSYLVANIA,
Adjusted by AIG CLAIM SERVICES, INC.

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

LUISA L. VALLADOLID, Claimant, v. PACIFIC OPERATORS OFFSHORE, LLP, Employer, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA adjusted by AIG CLAIM SERVICES, INC., Administrator.	OALJ Case No: 2005-LHC-00343 OWCP Case No: 18-83701 **DECLARATION OF GORDON "SCOOP" BOSWELL IN SUPPORT OF MOTION FOR SUMMARY DECISION** 29 C.F.R. § 18.40; F.R.C.P. 56

I, Gordon Boswell, declare as follows:

1. Between September 17, 1984 and June 15, 2005, I was employed by Pacific Operators Offshore,

LLP (hereinafter referred to as "Employer") as Plant Supervisor. I was so employed on June 2, 2004. I am known as "Scoop" Boswell. Currently I am self employed at Chamberlain/Boswell Instrumentation, 3820 Via Lato, Lompoc, CA 93436.

2. My responsibilities as Plant Supervisor at Employer included being lead man in charge of plant operations and supervising personnel/operations at Employer's onshore La Conchita oil and gas processing facility located at 7459 Pacific Coast Highway, Ventura, CA. I reported directly to the Operations Superintendent. I was responsible for supervising decedent Juan Valladolid.

3. The business operations Employer's La Conchita plant facility located at 7459 Pacific Coast Highway, Ventura, CA consisted of the intake of crude oil from offshore platforms via pipeline, the separation of water from the crude oil, the purification of the separated water, and the temporary storage of crude oil in tanks. Oil, natural gas and produced water were received from offshore platforms Hogan and Houchin.

4. I have personal and first hand knowledge of the matters stated herein, and if called upon to testify to such matters under oath, I could and would so testify.

5. On June 2, 2004, decedent Juan J. Valladolid was employed by Employer as a "Roustabout" and was assigned to Employer's land-based crude oil flocculation plant facility located at 7459 Pacific

Coast Highway, Ventura, CA. This location is known as Employer's "La Conchita" plant. Decedent's usual job duties with Employer primarily involved performing maintenance and repair duties at Platform Hogan, which was located approximately five miles off the coast of California. Decedent would access Platform Hogan by boarding a crew boat at Casitas Pass Pier. Casitas Pass Pier is located approximately three miles from the La Conchita plant facility. Decedent's regular duties on Platform Hogan included picking up trash and emptying trash barrels and office wastebaskets, washing the decks and well bay, assisting in repairing wellhead safety equipment, piping projects, painting, and assisting on the pipe deck with crane loads going on or off the platform.

6. Decedent's usual duties with Employer also included working at the onshore La Conchita plant, where he would perform various maintenance and clean-up duties such as painting, sandblasting, pulling weeds, cleaning drain culverts, using a forklift to unload trucks and using a forklift to transport equipment and debris throughout the plant. Decedent had been scheduled and assigned to work at the La Conchita plant during the period including May 5, 2004 and June 5, 2004 to assist in an ongoing project there involving the retrofitting of a water processing tank. His duties during this period of time primarily included assisting the welders, painting, moving scaffolding and moving debris. During the time period between May 5, 2004 and the date of his death, decedent worked only at the La Conchita plant and

did not work on Platform Hogan or on any other offshore platform. Specifically, on June 2, 2004, decedent was assigned to work at the employer's La Conchita plant, and was not present on Platform Hogan or any other offshore platform.

7. Decedent's job duties with Employer never involved loading, unloading, repairing or building a vessel.

8. On June 2, 2004, decedent was assigned to Employer's La Conchita plant facility. At approximately 4:00 p.m. on that date, I directed decedent to go to the rear yard of the plant with a forklift and to use the forklift to clean up some debris. At approximately 5:15 p.m. on the same date, I found Mr. Valldolid next to a plantain tree approximately ten feet off of one of the plant facility service roads to the rear of the plant. He was lying on his back with a forklift resting on his abdominal and chest area. The forklift engine was running. At the scene of the accident, there was a severed stalk of plantains lying on the forklift, and a knife was laying on the ground near the decedent. Decedent was wearing an empty holster which matched the dimensions of the knife. The tines of the forklift were raised to about "shoulder height." I immediately contacted emergency services and they arrived shortly thereafter. Mr. Valladolid was pronounced dead at the scene.

9. The harvesting of plantains was not a part of claimant's job duties with Employer.

10. The La Conchita plant, and the accident scene specifically, were separated from the Pacific Ocean by railroad tracks, a highway and a beach. It is not over or contiguous with any body of water and does not possess adjoining pier, wharf, dry dock, terminal, building way, marine railway, or any other area used at any time for the loading, unloading, repairing, dismantling, or building of any marine vessel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this *15th* day of ~~August~~ Sept, 2006, at *Santa Maria*, CA

/s/ Gordon "Scoop" Boswell
GORDON "SCOOP" BOSWELL

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

CERTIFIED COPY

LUISA L. VALLADOLID, Claimant, vs. PACIFIC OPERATIONS OFFSHORE, LLP, Employer; and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Carrier; and AIG CLAIM SERVICES, INC., Third Party Administrator, Respondents.	)))))))))))	OALJ NP. 2005-LHC-00343 OWCP NO. 18-083701

DEPOSITION OF GORDON BOSWELL

SANTA MARIA, CALIFORNIA

FRIDAY, SEPTEMBER 15, 2006

2:00 P.M. – 3:18 p.m.

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
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REPORTED BY: MARY TRICE, CSR NO. 11130

FILE NO.: A006EDD

* * *

[12] A Self-employed.

Q Okay. Have you worked down in Santa Barbara area in the past for a company named Pacific Operations, or something like that?

A Yes.

Q What's the name of that company?

A Pacific Operators Offshore, and I think it's LLC now. I think that's it.

Q Okay. Do you recall what period of time you worked for that company?

A Yes.

Q What is the period of time that you worked?

A From about 1990, '91, to a year ago June, which would have been 2005-2005, yeah. 6th of June, I believe it was in 2005, is when I quit Pacific Operators Offshore.

Q Okay. So it's fair to say you worked there somewhere around 14 to 15 years for that company?

A For that company, correct.

Q What was your job title?

A It varied. I was a plant operator.

Q Any other job titles?

A And then from plant operator, I was demoted to plant supervisor – or promoted to plant supervisor.

Q Any other job titles besides that, those two?

[13] A. No.

Q What was the nature, if you can, the nature of the business that this company had, what did they do?

A They were involved in the petroleum industry.

Q In what geographic area?

A Southern California.

Q Are they involved in Ventura County?

A Yes.

Q In the petroleum industry?

A Yes.

Q And in Santa Barbara County in the petroleum industry?

A Yes.

Q Do they have any facilities in the area of La Conchita?

A Ventura County, yes.

Q And did you work in the La Conchita area, in general?

A Yes.

Q Is that also the location where Mr. Valladolid worked?

A At the time of his death, yes.

Q All right. Did this company own any offshore platforms?

A To the best of my knowledge, yes.

[14] Q And do they operate these – or let me take it back, start over.

Q Are those drilling platforms or oil – some type of pumping stations; what are they?

A Offshore oil platforms.

Q What goes on out there?

A A large array of petroleum handling, oil handling. That can be from working on a rig to a small drilling operation, and all the responsibilities and jobs that that entails.

Q Do you have any idea how many people work for this company in the general area of Ventura and Santa Barbara Counties?

A No. At that time, no.

Q How many of those platforms did they operate?

A Two.

Q And how far off the coast are they located?

A About five to six miles.

Q Do they have names or numbers identifying them?

A Yes.

Q How were they identified?

A Platform Hogan, Platform Houchin, H-o-u-c-h-i-n.

Q Did you work on Hogan or Houchin?

A No.

Q Did you ever go out there during the 15 years?

[15] A Yes.

Q All right. Was it as part of your job duties to go out there when you did go out there?

A To the best of my recollection, partially, yes.

Q Can you estimate approximately how many times you would have gone to those two sites?

A No. Not a good estimate. Very few.

Q When you say "very few," to you, does that mean less than ten or more than ten?

A Less than ten.

Q So in 15 years, you probably went out there less than ten times; is that true?

A Yes.

Q All right. So is it fair to say that then most of your duties during the 15 years were accomplished on shore in that Santa Barbara, Ventura area?

A That's correct.

Q And where is this? Where did you report to duty each day, was there one location or variable locations?

A At the La Conchita shoreside facility in Ventura County.

Q And what went on at that particular facility?

A We were the receiving station or receiving facility for the petroleum and oil that was pumped to us from the two platforms.

[16] Q Can you estimate how many workers for this company worked at that facility while you were there on any given day?

MR. THOMAS: You mean over the entire 15 years?

MR. SPRINKLES: Yeah, over the 15 years.

THE WITNESS: No recollection.

BY MR. SPRINKLES:

Q How about the day Mr. Valladolid died, do you recollect about how many people were working that day at that facility?

A Less than ten, more than four.

Q Is this the specific facility at which he died?

A That's correct.

Q And were you there that day?

A That's correct.

Q Were you plant supervisor on that particular day?

A I was plant supervisor and operator. Two duties.

Q Were you the direct supervisor of Mr. Valladolid on that day?

A Yes.

Q Do you recall approximately the period of time that Mr. Valladolid worked for the company?

A No.

[17] Q How many years had you known him?

A Oh, I can't recall.

Q Was he working for the company when you started?

A Yes.

Q So it would be fair to say that he worked there longer for that company, up to the day he died, that he had been there longer than you had?

A That's correct.

Q Did you see him every day?

A No.

Q Was he principally working out at the platforms of Hogan and Houchin?

A That's correct.

Q Can you estimate, during a given week, would he normally – let's change that.

During a given month, would he normally be out at the platforms every day, as opposed to being at your facility?

A That's correct.

Q All right. Do you know what his job title was –

A No.

Q – right before he died?

A No.

Q Can you tell us how it is he ended up being [18] supervised by you that day that he died?

A He was directed to come into the plant to be help – general – on a project we were working with, or on, at the plant.

Q And where would he come from to come into the plant? Where would he have been; do you know?

A I imagine he'd have come from home. I don't think he would have reported to the platform and then came to the plant, so he would have probably came from home in the morning.

Q Do you know where his home was?

A Well, that's possibly two different things there. His home, I believe, was in L.A., his main home. And he may have been staying at the facility in a trailer home, but I don't recall.

Q Out at these platforms, Hogan and Houchin, did the workers out there spend the nights out there too? In other words, were they there day and night during the week?

A No. It was not a live-on platform for general work crews.

Q Did any of the workers spend the nights out there?

A Possibly. I couldn't say who or when. It depended on what was happening on the platform.

[19] Q What were Mr. Valladolid's job duties on the day he died?

A As part of a crew, his duties was to help and be available to help on the project. That means including everything. He could paint, he was a good all-around hand. He done a lot of different things.

Q Did he operate a forklift that day?

A Yes, he did.

Q Was that part of his duties?

A Yes, it was.

Q Why would he be operating a forklift that day? What was he doing with it?

A His duty was to move metal that was in scrap piles back by the barranca and kind of centralize them in one location, centralize the metal in one location.

Q Had he ever done that before?

A I don't recall.

Q What other job duties did he have that day besides driving the forklift and moving the scrap metal?

A Well, as I said before, he was an all-around hand. He was helping us on the project. So that could have been painting, could have been helping move welding equipment for the welders who were working there, scaffolding. Could have been putting splashes on a tank or on a vessel, it varied. Whatever was available and he [20] was free to do it, and he was directed.

Q I didn't catch that part about a vessel; what kind of vessel?

A We were working on an open top, open tank, water tank. I guess tank, tank or vessel.

MR. THOMAS: Not a ship though, correct, when you say vessel?

THE WITNESS: Oh, yeah, not a ship. Usually a tank – I guess you'd probably say it would be a tank. A vessel would be something that might be under pressure, and a tank would be open top with no pressure. Containment vessel, not a ship.

BY MR. SPRINKLES:

Q These job duties you've just described for the plant facility you're talking about, did you know of Mr. Valladolid performing those job duties prior to that day that he died?

A In various places throughout the company, painting, yes.

Q Would it have been at the facility, or at some other place, like the platforms?

A It would be at the platforms.

Q Do you know what job duties he was assigned at the platform besides painting?

A No.

[21] Q Did he have a different supervisor out at the platforms, other than you?

A Yes.

Q In fact, were you actually his supervisor, other than this one day?

A I don't understand the question.

Q Okay. Good. At any other time, other than that particular day that he died, were you his supervisor?

A Possibly for the length of time we were working on this project, and that may have been a week, two weeks or three weeks prior to his death, then I would be his immediate supervisor if he was in the plant.

Q And during that one-, two- or three-week period for this project, do you recall him being at the facility on shore during those days?

A Yes.

Q How many of those days do you recall him being there?

A I couldn't say.

Q Okay. What I'm trying to get to is, was this a normal thing for him to do, to come on shore and work in the plant facility, or was this a rare thing for him to do, considering he had been there for over ten years?

A Because of what he done on the platform, was probably a rarity. He may be coming in to help on a [22] project at the plant, and it may be once or twice a year, if then. Most of his job duties were on the platforms.

Q Do you recall the names of any supervisors on the platforms?

A No.

Q Do you know who Chris Magill is?

A Yes.

Q What was his job?

A At the time of Juan's death?

Q Yes. That would be a good time, thank you.

A Well, I'm going to say he was the electrician, but he may have also been the maintenance supervisor for the platforms.

Q Do you know whether or not he supervised Juan Valladolid prior to Juan's death?

A I don't know.

Q Do you know whether Juan did any electrical work with Chris Magill?

A I wouldn't have the slightest idea.

Q Or maintenance?

A Possibly maintenance work with him, if Chris was the maintenance supervisor.

Q Now, when we use a term like "maintenance," maintenance in a company like this, is that maintaining equipment or is that cleanup work? What does that [23] mean? What does maintenance mean?

A It's all-encompassing. Maintenance, it can mean a lot of different things. It could be working on equipment. It could be painting. It could be sanding. It could be running a winch. It could be a lot of different things. Maintenance is just like maintaining a car. If you maintain a car and you are not a mechanic, you can still change the tires, you can still put gas in it, you can still check the battery. Maintenance is all-encompassing.

Q Are you familiar with the name Jose Rosales?

A Yes.

Q Did he work for the company while you worked there?

A Yes.

Q Did he work out on the platforms?

A Yes.

Q Do you know what his job title was?

A No.

Q Do you know whether or not he ever worked with Juan Valladolid while he was alive?

A I can make the assumption and say because they were in a general location together, yes, but that's an assumption.

Q Do you have any idea what Juan – or excuse me,

* * *

[27] A No recollection.

Q All right. How did Juan Valladolid get from the shore, or the mainland out to the Hogan and Houchin platforms?

MR. THOMAS: Objection; vague. You mean generally, or on a particular day?

MR. SPRINKLES: Generally speaking.

THE WITNESS: Crew boat.

BY MR. SPRINKLES:

Q What is a crew boat?

A A boat that is used to take personnel to and from platforms to shore, and also used in operations, whether that's delivering supplies or pipe, or pieces of equipment that needed to be delivered to the platforms.

Q Where did these crew boats – wait a minute. Let me ask you this: How many crew boats did this company operate in that area that ran out to Hogan and Houchin? Let's take the time period – say, the last year before Juan Valladolid died, how many crew boats did they have?

A I believe just one.

Q Did it have a name or designation?

A "Designation" meaning?

Q A number that you're aware of?

A Only name I can recall is The Matthew.

Q The Matthew?

[28] A Right.

Q How many feet long is a crew boat? Any idea?

A No, I couldn't give you an idea. Approximation, but it's a guess.

Q Okay. Did you ever get on that crew boat?

A Yes, that's the only way you can get to the platforms.

Q Did the company put equipment on the crew boats that went out to the platform?

A Yes.

Q Who loaded the equipment onto those, or onto the crew boat, to get it out to the platform, for instance? Let me be specific. Did any of the four individuals' names I gave you, and let's add Juan Valladolid, so for any of those five individuals, did any of them load equipment onto those crew boats?

MR. THOMAS: If you know.

THE WITNESS: I'd make the assumption that yes, a couple of them, probably.

BY MR. SPRINKLES:

Q Would Juan Valladolid, to your knowledge, have ever loaded equipment onto those crew boats to go out to the platforms?

A I don't know.

Q Did the crew boats also transport supplies out [29] to the platforms?

A Yes.

Q What kind of supplies?

A Well, it could be anything from a small piece of pipe to a dust mop.

Q Okay. Do you know whether or not Juan Valladolid ever put supplies on those crew boats to go out to the platforms?

A No.

Q Is it possible that he did both supplies and equipment?

A If it was hand held, and no heavier than maybe 70 pounds, yes, but if anything was heavier than that, it was put on by a crane or an air tugger.

Q Where was The Matthew crew boat berthed?

A I think its anchorage was right there off the coast at the Carpinteria pier, or close to the Carpinteria pier.

Q Do you know whether or not Juan Valladolid ever unloaded equipment or supplies, or any other things off of the crew boat, either at the platforms, or on the mainland side?

A Well, here again, I guess I'm showing my ignorance, because I don't know if he took anything – here again, weight-wise, 70 pounds or so, personal items, [30] back and forth. I don't know if he was a crane operator or operated an air tugger, so I couldn't say.

Q Do you know who in the company would know whether or not he loaded and unloaded the crew boat?

A Well, any of those three guys, I guess. Moser would know. Magill would know. Perez would know. And I forget – what was the other one? There was another one.

Q Rosales.

A Rosales would know. They would all know.

Q So, in your opinion, they would all have better knowledge than you would about that subject?

A Oh, yeah. Yeah.

Q The type of equipment and supplies that went on these crew boats, was it used by the company to facilitate the transportation of that oil from the platform to the mainland?

A No.

Q If something broke out on a platform and they needed a part, how did it get out there then?

A By the crew boat. But your last question was talking about transporting the oil. So we need to clarify which we're doing here. Parts and supplies, or oil?

Okay. Let's let you clear it up then. How was oil transported from the platforms?

[31] A By pipeline.

Q And was that pipeline underneath the water?

A It was on the ocean floor.

Q On the ocean floor. Does it come into an area called Muscle [sic] Shoals?

A No.

Q Where does the pipeline come into the mainland?

A Right there at La Conchita.

Q North of La Conchita by – within a mile or so?

A Yeah, north of La Conchita, the small town, half a mile, three quarters of a mile.

Q Okay. Are there some restaurants just north of La Conchita that sit on the ocean side of 101?

A I believe there's one there – Muscle [sic] Shoals.

Q Is there a little island right off that area, off that restaurant?

A Yes. Yes.

Q Is there a connection between the island and the mainland there?

A Like a wooden bridge.

Q Looks like a wooden bridge?

A Right.

Q Does that have anything to do with this company?

A No.

Q Is it, in fact, a bridge?

* * *

[33] I guess Muscle [sic] Shoals, just a little bit north of that restaurant, probably a block to two blocks, you've got the access road that goes to the island. Keep going north, you pass La Conchita. About a half a mile past La Conchita or three-fourths of a mile past La Conchita, then you get to La Conchita shore-site facility that Pacific Operators has, and the pipeline comes into that facility underground. So once the pipeline from the platform gets to shore, it goes underneath the riffraff, goes underneath the freeway, goes underneath the railroad tracks, is underground, to the inside of the facility, to the inside of the plant.

Q And the plant you're speaking of, or facility you're speaking of is the facility where Mr. Valladolid died?

A That's correct.

Q Do you know how many acres that facility has?

A Not now, no.

Q On the day he died?

A I don't recall. No.

Q Were there a lot of storage tanks on that site on the day he died?

MR. THOMAS: That's – objection.

THE WITNESS: Vague.

MR. THOMAS: Broad.

[34] THE WITNESS: I don't know for sure. Storage tanks. Define "storage tanks."

BY MR. SPRINKLES:

Q Well, what did they store at that facility in tanks?

A Well, nothing really was stored. The oil was an ongoing process that was brought in and shipped out. If we stored anything, it may be a 55-gallon drum of oil that we needed to use for maybe the Waukeasha engines, or maybe some gasoline so that we could put gas in the vehicles, but as a storage facility, it's not considered that.

Q What happened to the oil that came up into the facility? What happened to it? If it wasn't stored there, what happened to it?

A It was processed. It comes in as a slurry, so when it comes out of the formation and is pumped from the platforms to the plant, it comes in as oil, water, gas and solids. And the solids is usually real fine formation sand, flour sand. In order for the oil to be sold and sent down the pipeline, it has to be extracted from the other three entities: water, gas, and solids. So at the plant, those four entities of that slurry were divided, processed and then sent down the line.

Q And you supervised that whole operation; is that

* * *

[36] there. Could go farther than a month in time.

Q How many projects like this each year did the company have – say, in the last five years before Juan died?

A I couldn't give you an estimate.

Q So we've learned how oil gets from the platforms to your facility, right? You explained that, through pipelines.

A Correct.

Q Now, the reason I went through that, we wanted to distinguish also the other part of that

question, which was supporting the transport of that oil. We know it came through a pipeline, but if something broke out there on those platforms, I want to know if Mr. Valladolid was hired, or he's working in this company to support getting parts out there, or working on those parts, that equipment, to get that oil, keep it flowing?

A I couldn't say. That would be up to whoever was his supervisor on the platforms. I don't know what his duties were on the platforms.

Q Is there any way to quantify the amount of time he spent on those platforms, versus the time he spent working on these special projects at the facility?

A Percentage-wise?

Q Percentage-wise.

[37] A Two percent at the facility, 98 percent on the platforms.

Q Did you have any personal relationship with Mr. Valladolid outside of work?

A No.

Q What kind of reputation did Mr. Valladolid have, in general, in working for this company?

A I believe – my personal opinion, I thought he was an upright, hundred-percent good worker.

Q Do you know whether or not any of those individuals I named were his personal friends?

A I couldn't say.

Q On the day he died, did Mr. Valladolid move any equipment at your facility?

A No.

Q Did he move any pipe?

A No.

Q Do you know what time of day he started his shift that day?

A Probably was 7:00 a.m.

Q And do you know what approximate time he might have died at?

A No. Approximately between 4:00 and 5:00 in the evening.

Q Would that be then the end of his shift?

[38] A. Yes.

Q Did he die on company property?

A Yes.

Q Were you the first person to find him?

A Yes.

Q All right. Between the time you found him and the last time before that that you saw him, about how much time transpired?

A About an hour.

Q Do you know what he was doing during that last hour, as far as work goes?

A I knew what he was directed to do.

Q What was he directed to do during that last hour?

A He was directed to use a forklift and move the scrap metal into a central location.

Q Was that a new task for him to do that day? In other words, he hadn't done it before, but that was your order to him at that point, to start doing that, or had he been doing that all day?

A He hadn't been doing it all day. And to the best of my recollection, I think he had done it one day or one evening before.

Q Was anybody helping him move the scrap metal?

A No.

[39] Q Other than yourself, were there any other supervisors located at the facility that day that he died?

A No.

Q Was there anyone else giving directions or instructions of any kind to Mr. Valladolid on that day as to what he should do?

A No.

Q Did he ever leave the facility that day, after 7:00 a.m. when he arrived?

A I don't know.

Q Do you know where he would have gone to buy food or to eat his lunch?

A If he went – I don't believe he left the plant, but I can't – he would have had his own lunch with him, and he would have ate there at the plant.

Q Do you have any specific knowledge as to how he died that day?

A Would you clarify the question?

Q Mr. Valladolid was working on a forklift moving scrap metal; is that –

A Yes. That was his job –

MR. THOMAS: Objection; that misstates his testimony. He didn't say he was doing that.

[40] BY MR. SPRINKLES:

Q What was he doing in that last hour?

A He had been directed to take the forklift, go back and centrally locate all the metal.

Q And when you say "centrally locate", locate is a word that doesn't mean find it, but move it?

A Move it.

Q What kind of metal is this?

A Scrap metal.

Q And where does this scrap metal come from?

A That scrap metal came from off the platforms, and maybe some from there at the plant.

Q In that he had done it the day before, or one of the days before in the evening, you had said, and he was doing it that day, can you quantify how much scrap metal we're talking about?

MR. THOMAS: Objection; misstates his testimony as to what he was doing on the particular day of death.

MR. SPRINKLES: You still get to answer, if you can.

THE WITNESS: Restate it. I don't understand the question.

BY MR. SPRINKLES:

Q Was he moving scrap metal that day?

A No.

Q He wasn't moving it?

* * *

[42] Q Outside of the facility – how is the facility separated from the outside? Is there a fence?

A Chain-link fence, yes.

Q Approximately how tall is the fence?

A Six feet.

Q Do you know whether or not Mr. Valladolid was trying to get a banana from a plant on the property or off the property?

A On the property.

Q When you say "scrap metal at the facility," can you be more specific as to what the scrap metal is?

A It could be old pipe. Could be old pieces of a tank. Could be old catwalk. Could be old chain, old cable. Most of all the metal would have something to do with either the platforms or the plant, and that would take in a large area.

Q How would the scrap metal that was on a platform get to the facility?

A It would have been put in bins, loaded on the crew boat, the work boat, taken to the pier, unloaded from the work boat, probably to a truck, flatbed, then taken to the plant and dumped out of the bins.

Q What happens to the scrap metal after it's dumped? And what I mean by that is, not necessarily that day, but does the company just store it there forever, or [43] do they give it away? Do they sell it? What do they do with it?

A It was usually sold by the ton. We'd have contractors come in, and they would take that scrap metal, cut it into manageable pieces, put it into bins,

and then it would be taken to a metal scrap yard, and whatever they done with it.

Q Do you know whether or not Mr. Valladolid had ever loaded scrap metal off the platforms into the bins?

A I don't know.

Q Do you know whether or not he had ever assisted in getting the scrap metal off the crew boats to come to the facility?

A I don't know.

Q At 7:00 a.m. that morning, did he report for work?

A To the best of my knowledge, yes.

Q Did he report to you?

A To the best of my knowledge, yes.

Q Do you recall what his first duties were that morning?

A No.

Q Other than moving the scrap metal being his duty at the end of the day, do you recall any other duties between the time he reported and that last period of time [44] at the end of the day?

A Specific duties, no.

Q All right. Have you reviewed any documents prior to this deposition?

A No.

Q Have you discussed your deposition testimony with anyone prior to this deposition?

A No.

Q Do you have any notes or notebooks or cards or writings of any kind regarding the – let's say the day that Mr. Valladolid died?

A No.

Q Did the company keep any time cards for its employees?

A They didn't have a time card that they punched. It wasn't a set time card clock, or anything.

Q How did you keep track of Mr. Valladolid's hours when he worked for you during that last two to three weeks of time before he died?

A The employee was responsible to fill out his time sheet weekly, and they were paid every two weeks.

Q Did the time sheet just have hours on it, or did it have more information than just the hours that they worked, such as job duties or location where they might have worked, anything like that?

[45] A Well, the time sheet would have location, if it was either at La Conchita, and probably at either platform. As for job description, no.

Q An employee at Mr. Valladolid's level, what would he do with his time sheet, would he give it to a supervisor or give it to someone else, or mail it in, what would he do with it?

A He would keep it with himself, or keep it so he had access to it. And then at the end of two weeks, would sign it in, or would sign it and turn it in to the supervisor.

Q Had Mr. Valladolid given you any signed time sheets during that last three-week period before he died?

A No. What would have happened, because he was still under his – it would have to have been signed either by probably his supervisor out on the platforms, and I don't know who that would have been. That would have either been John Moser, or it could have been Chris Magill if he was doing maintenance with Juan, so they would have had to have signed his sheet.

Q And did you have other employees such as – although not Mr. Valladolid, but like him, at his level, giving you time sheets?

A If they were at the plant, yes. If they came in from the platform, they would have given it to their [46] supervisor to sign.

Q Did the company have a rule or a policy or anything that said what you were supposed to do with that time sheet?

A Signed them, verified hours, looked at hours.

Q Kind of like on an honor basis, and then they were either faxed to the company office or they were either taken to the company office, or somebody from the office picked them up.

Q And when you say "faxed to the company," do you know where they were faxed to, where that location was?

A Probably would have been faxed at that time to the Santa Barbara office.

Q Do you know the address of that office, at that time?

A I believe it's going to be 205 East Carrillo Street, Suite 200, to the best of my knowledge. Well, that's pretty good, actually.

Q Do you know who received those faxes on Carrillo Street, there at the company?

A No. Could be anybody. If it came into a fax, somebody who was walking by the fax picks it up and takes it to probably accounting.

Q Okay. How big of a crew do they have, or office staff, do they have working at Carrillo Street, do you [47] know how many people work there, approximately?

A More than five, less than 15.

Q Do you know who was head of accounting while – about the time Valladolid died?

A Probably would have been Mark Stratton.

Q What was his position in the company, other than being in accounting, was he a management person or senior V.P., or anything like that?

A I don't know.

Q Do you know whether or not he still works for the company?

A Yes, he does.

MR. SPRINKLES: I don't have any more questions at this time.

MR. THOMAS: I just want to clarify one thing.

EXAMINATION

BY MR. THOMAS:

Q On the date of Mr. Valladolid's death, he had been working on the flocculation plant?

A Flocculation tank.

Q Tank. Thank you.

A Yeah.

Q My understanding is that he had been working on that project for some time before that date, correct?

A Correct.

[48] Q And my understanding is the start of that was around June – or excuse me – May 5th of 2004; does that sound accurate to you?

A Yeah. Best of my knowledge. Time frame, a month, to the best of my knowledge.

Q Okay. And during that time, Mr. Valladolid was working with you on shore, right?

A To the best of my knowledge, yes. There may have been times, or one or two days during that month he may have gone offshore to do something.

Q But you don't have a specific recollection?

A But I don't have a specific recollection, no.

Q The crew boat, you said it was berthed at the Carpinteria pier?

A Yes.

Q How far is that from the from Pacific Operators Offshore's La Conchita facility?

A Probably about four miles. Three to four miles.

Q Does Pacific Operators own the berth or the pier?

A No.

MR. THOMAS: No more questions. Thanks.

MR. SPRINKLES: Okay. Still on the record. You're going to – I'm talking to the court reporter at this point. You're going to create a transcript, correct?

* * *

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

LUISA L. VALLADOLID, Claimant, vs. PACIFIC OPERATIONS OFFSHORE, LLP, Employer; and, INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Carrier; and AIG CLAIM SERVICES, INC., Third Party Administrator, Respondents.	OALJ No. 2005-LHC-00343 OWCP No. 18-083701

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DEPOSITION OF CHRIS MAGILL
CARPINTERIA, CALIFORNIA
TUESDAY, SEPTEMBER 19, 2006

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File No. 6080-1235

* * *

[12] Q. – Hogan, back and forth?

A. Yeah, yeah, pretty much.

Q. All right. And when you worked at the La Conchita plant, can you tell me approximately where it's located?

A. The La Conchita plant is about a half mile north of the town of La Conchita on the mountain side on the same side of the highway.

Q. And on the other side of the highway, the nonmountain side, what's over there?

A. The Pacific Ocean.

Q. Okay. Can you estimate the distance between the La Conchita plant and the ocean?

A. Probably about 250 to 300 yards.

Q. What's on the La Conchita plant facility? What's at that site?

A. It's a water process and oil and gas process plant.

Q. And that facility is part – is owned by the company that you work for?

A. Correct.

Q. And that's –

A. Pacific Operators.

Q. Pacific Operators?

A. Uh-huh.

[13] Q. So they own that property. Do they own the platforms, Houchin and Hogan?

A. Hogan, yes.

Q. And do they have a berth for a vessel, a ship, a boat, whatever it's called that runs – a crew boat that runs back and forth out to the platform?

A. Yes. Venoco Oil Company actually owns the pier, and then we lease a boat that takes us in and out of that pier, which is up here in Carpinteria.

Q. Out on the platforms, Hogan and Houchin, what are those facilities for? Those platforms, what do they do?

A. They produce the oil, gas, and – well, the oil and the water come as an emulsion, and then the gas breaks out separately. So we're producing oil, water, and natural gas.

Q. What happens to the gas?

A. And the gas goes in one pipeline and the oil and water go in another pipeline to the plant in La Conchita.

Q. Can you estimate how far offshore Hogan and Houchin are?

A. Yeah, I believe – I think Hogan is 3.9 miles, something like that, and – for Hogan, and then Houchin is a little over 4 miles, I believe.

[14] Q. How often does the crew boat go out to Hogan and Houchin?

A. Twice a day. And then they also make trips for cargo, equipment, tools, and parts.

Q. And is it always sent out from the Carpinteria berth out to there?

A. Most of the time. Occasionally we'll get something from Hueneme Harbor, bigger pieces.

Q. And would that come on a different boat?

A. Uh-huh, yes.

Q. Would the people who work out on Houchin and Hogan have anything to do with that boat coming from Port Hueneme?

A. No, other than the crane operator making a lift off of it.

Q. And is that a crane operator on the platform?

A. Yes.

Q. Is there a crane operator at the harbor for Carpinteria where it's loaded?

A. Yes, yes, there is.

Q. Other than the berth itself, is there an area around the berth for storage of cargo or supplies, equipment to – like a staging area when that ship is there to put stuff there, cargo, equipment supplies,

and then it's staged; it's held there and then put on the [15] crew boat –

A. Yes.

Q. – later that day or the next day?

A. Yes.

Q. And the facility at – near La Conchita, does it have a name?

A. It's called the La Conchita oil and gas plant.

Q. And do you know the purpose of that facility?

A. Yeah. We separate and dry the oil out for sales, and it is actually – goes through a sales line there. And the water is processed and made clean enough to be sent back out and into the ocean or down a – an oil well that is meant for water disposal. And then the gas is processed and refined and then sent in to Southern California Gas pipeline.

Q. So is it fair to say that the product of this company, Pacific Operations or Pacific Operators Offshore, is gas and oil? Is that what they sell?

A. Correct.

Q. And it is moved from the platforms to the La Conchita plant through pipes?

A. Correct.

Q. All right. And then it's transported by pipes to where – or is it transported in some other way? By truck or –

[16] A. No, it's all in pipelines.

Q. Okay.

A. And I believe the oil winds up in Los Angeles at the refineries down there, and the gas goes right into So Cal's line, and I'm not sure where they distribute it from that point, but it goes directly into their line. I think they have some kind of a substation in Ventura or something.

Q. Okay. When you began in 1991 working for the company, was Mr. Juan Valladolid employed at that time, to your knowledge, by the company? Was he already there?

A. Yes.

Q. When you joined the company – when did you first meet Mr. Valladolid?

A. I probably didn't meet him for maybe – probably a year. My first year, I don't think I met him in the first year that I worked there.

Q. Where were you assigned in that first year?

A. I was primarily onshore at La Conchita.

Q. What kind of duties did you have at the La Conchita facility?

A. I was a roustabout and electrician.

Q. Okay. Well, I've heard that word before, roustabout, but I'm not sure what the duties encompass. [17] So what are all the duties of a roustabout?

A. A roustabout does cleaning; they help when there's pipe work to be done. They – basically they hop around and take care of whatever needs to be taken care of.

If somebody's changing out some pipes, they'll break all the bolts and do the majority of the rough work, clean up the pits and tanks, and do a lot of repair work and stuff like that.

Q. What pipes are these that we're talking about?

A. Well, in a plant or a platform, you've got – everything is in pipelines, and pipelines will wear out or they'll need to change size or change a valve; and when you do that, then you – everything is flanged in sections. And then you take a particular piece out and replace it or exchange it with something different.

Q. Does the machinery out on the platforms – equipment, the machinery, pipes, whatever else, does it break down occasionally?

A. Yes.

Q. And so where do the replacement parts, equipment, tools come from to go out there and fix it?

A. Well, tools and parts and equipment all come from different vendors all over Southern California

and the United States, and we purchase everything from

* * *

[20] task?

A. Oh, yeah, a few times. Yeah, I've helped out a few times.

Q. How about Mr. Valladolid? Did you ever see him do that?

A. A few times, yes.

Q. How about out there on the platforms? Did you ever help get the pipe – help the crane operator's job by helping get the pipe off or undo those choke devices? Did you ever do that out there?

A. Yeah.

Q. I'm using my words. How would you describe it?

A. Well, we just call it, you know, rigging, helping them rig it up or unload it.

Q. And did you see Mr. Valladolid do that out on the platforms?

A. Oh, yeah.

Q. Was that a normal part of his job?

A. No.

Q. Did he do it more than once in a while?

MR. THOMAS: Objection; that's vague. What does "once in a while" mean?

If you understand the question, you can go ahead and answer it.

THE WITNESS: He didn't do it frequently.

[21] Q. BY MR. SPRINKLES: Would you say he did it once a month or more?

A. I'd say once a month.

Q. How did the pipe and equipment get from, say – well, let me ask you this – strike that question – how did the pipe and equipment and tools get to the staging area?

A. Those are shipped by the vendors that we buy them from. They either arrange for trucking, or it comes UPS. And then a lot of the vendors and companies that we deal with actually have their own delivery trucks. So it's brought from the company and set at the pier; and the guys that operate the pier do all the unloading, stage it. And then when we're ready to have the boat pick it up, then we call them and they load it on the boat.

Q. Who are the guys that are at the pier doing that?

A. We have a pier crew, usually one rigger, roustabout, and a crane operator that work there full-time.

Q. Did Mr. Valladolid ever serve as a rigger or roustabout that you know of?

A. No.

Q. Did he ever do that job out on a platform?

* * *

[27] than the electrical work that you just talked about?

A. Yes. In later years when I became the maintenance supervisor, then I supervised all the painting and cleaning, everything that he did.

Q. In that – he died in June of 2004. Were you a supervisor at that time?

A. Yes.

Q. Did he work for any other individuals out there? Did anybody else supervise him besides yourself around June 2004?

A. No, not really.

Q. How about at the La Conchita plant? Did he ever get assigned to go back onshore around June of 2004?

A. I believe so. He was going in to paint a vessel at the plant for Scoop.

Q. Okay.

A. For Mr. Boswell.

Q. Scoop is Mr. Boswell?

A. Yes.

Q. When you say "paint a vessel," in nautical terms, we're not talking about a boat?

A. No, we're talking about a tank.

Q. A tank that holds something?

A. Yes.

[28] Q. Could be gas?

A. No, it would have been water. I think he was working on the sand filters or something over there. I don't remember specifically what it was.

Q. Did Mr. Boswell have to ask you or call you up to get Mr. Valladolid to come in to work in June of 2004?

A. Yes.

Q. Is that what happened?

A. Yes.

Q. Can you recall – in the, say, three weeks preceding Mr. Valladolid's death, in that time frame, can you recall Mr. Boswell calling you up and saying that he needed somebody to come in and do work for him?

A. Yes.

Q. Did he specifically ask for Mr. Valladolid?

A. Yeah, because Juan was basically our only painter at that time. And he said, you know, I'd like Juan to come in and paint this tank for me, and I said well, sure, we can swing that.

Q. And do you recall any discussion as to how long Mr. Valladolid was expected to be at the La Conchita facility?

A. Well, we weren't sure; so we figured it would take probably, you know, three weeks or so to paint the [29] thing, but we weren't positive, so we didn't form a time line that it was going to be completed in.

Q. Was it your understanding that this was a temporary duty for Mr. Valladolid and when he was finished painting the tank he'd come back out?

A. Yes.

Q. And he'd come back out to the platforms and work for you?

A. Yes.

Q. And do the normal jobs and duties that he'd been doing all year long?

A. Correct.

Q. Did he go out there to La Conchita in May prior to his death and begin the painting?

A. Yes.

Q. Do you recall how many weeks he'd gone out there?

A. I believe that he was there for probably two or three weeks. I don't remember for sure.

Q. Did you have any contact with Mr. Valladolid in those two to three weeks prior to his death?

A. Yes.

Q. Where was that contact at?

A. We spoke on the phone, and then I came in a couple of times to do some electrical work.

[30] Q. You say you came in?

A. Yeah, I came into the plant at La Conchita; and, of course, we chatted and he told me what he was doing. And he needed some parts for his paint gun, so I ordered him some parts for his paint gun.

Q. Did Mr. Boswell tell you that Mr. Valladolid would do other jobs, other than painting that vessel?

A. No, he didn't mention anything else. That was primarily what he was supposed to be doing.

Q. And when Mr. Valladolid talked to you on the phone, did he tell you what he was actually doing at the La Conchita facility?

A. Well, he – he mentioned that he might run some stuff around for Scoop, some materials, and – or Mr. Boswell, I should say. And I told him – I said, Well, that's fine, do whatever he needs you to do.

Q. When you say "run some materials around," what does that mean?

A. With the forklift.

Q. Was Mr. Valladolid trained, licensed, certified, whatever it is, to drive a forklift?

A. As far as I knew, he was licensed when he worked for Finley. He worked for Finley Oil Well Service for probably 15 years before I met him, maybe even more. He was their forklift driver down there. He [31] drove a forklift; he worked servicing the rigs and – but primarily he worked in the yard moving equipment around and stuff like that.

Q. For that other company?

A. Yeah.

Q. And for this company, Pacific Operators, did Mr. Valladolid ever move materials with a forklift?

A. Yeah, I believe he had done it a couple of times over at La Conchita when they brought rig equipment in from offshore, and he ran the forklift.

Q. And he ran it and he moved it, what does that mean?

When you run a forklift and you move equipment, what are you really trying to accomplish here?

A. Well, you're moving it from one place to another for the mechanic to work on it or to store it.

In this case – or most of the time, it was moving it to a location where we wanted to store the equipment.

And so they bring it in on a truck; he'd take it off; we'd put it where we want it stored and then park the forklift.

Q. And how would the equipment get from the platform to the facility?

A. On a truck.

[32] Q. How does it get from the platform to land?

A. Oh, on the boat.

Q. Is this the crew boat?

A. Yes.

Q. And does the crew boat have a name?

A. Yes, The Matthew.

Q. The Matthew. Is there a significance to that name?

A. I believe it was the original boat builder's or owner's name.

Q. How big a boat are we talking about?

A. It's a hundred-foot boat.

Q. If the equipment we're talking about was brought in by the crew boat, how did it get off the crew boat on to the pier?

A. Then the Venoco pier operators would crane-lift it and load it onto the truck, contract truck.

Q. And what would the truck driver do with it?

A. Then he'd haul it to wherever we told him it needed to go.

So in that case, he'd haul it from the pier and bring it down to La Conchita to be unloaded.

Q. And do you know whether or not Mr. Valladolid would then – if he was driving the forklift, would unload that equipment off the truck?

[33] A. Yes.

Q. And then he would put it someplace to be stored?

A. Correct.

Q. Would it be – being stored to be used at a later date back out on the platforms?

A. Yes.

Q. When he was moving pipe around this time in 2004, were there other metals that he was moving around that you know of at the same time?

A. I don't recall exactly, but I think they were moving some scrap metal around too.

Q. What's the difference between this scrap metal and the pipe? Is it all the same stuff or different stuff?

A. Well, no. The scrap metal is pipe and reinforcement steel and stuff that is no longer usable. It's rusted to the point where it's no longer functional,

and then we sell that off to a scrap dealer, and they come and take it to the big scrap yards.

Q. And the pipe that he might have been moving around at the same time, what would he be doing with that?

A. Well, some of that pipe that is still usable, we would just store it and then use it at a later date.

[34] Q. Had Mr. Valladolid ever done this before where he was taken off of the platforms and given over to Mr. Boswell to do similar-type jobs?

A. Yes, but not very often.

Q. Okay. Is it – when you say "not very often," can you be more definitive? Is it once a year he does this or more than once a year?

A. Maybe once every two years.

Q. And each time that he would get involved with the La Conchita facility, would it be for a long period, like the three weeks we're talking about in June of '04, or is it a shorter period of time?

A. Usually shorter period of time, usually one or two days.

Q. Okay. Do you know who Johnnie Moser (ph) is?

A. Yes.

Q. Who is Johnnie Moser?

A. Johnnie Moser was the tool pusher for Finley Oil Well Service Offshore.

Q. Was he an employee of Pacific Operators?

A. Well, he – he was employed by Pacific Operators. Finley Oil Well Service is the service company that Pacific Operators – the owners of Pacific Operators own Finley Oil Well – it's a separate company – and they contract to Pacific Operators.

* * *

[36] similar to a drilling rig, but it's a much smaller scale. And they pull pumps and tubing that gets worn out.

The pumps that pump the oil, they actually wear out; and so those guys pull them up out of the well, refurbish everything, and put it back in

Q. Did Mr. Valladolid do that on occasion, what you just described?

A. He had years ago, long before I ever met him.

Q. If he did it for this company, he did it before you started here?

A. Oh, yeah, yeah. And he worked for John way back.

Q. But did he ever – what I'm interested is when he's working for – out on Hogan and Houchin. Do you know whether or not he ever worked with Mr. Moser in that capacity?

A. No, not on the rig.

Q. So what – okay. So what did he do for Mr. Moser?

A. He was helping. If they were – like, if they had to cut up some pipe or they had to move some equipment around and they needed one extra hand to do that, then he would help out, but he wasn't actually working on the rig under John.

* * *

[40] Q. Is that in the order that you think would know the most, or is it just in general?

A. Yes, in that time frame. Previous to that time frame, John Moser would be far more knowledgeable.

Q. How about more toward 2004?

A. That would be me.

Q. So you're the number one guy as to knowing what his job duties are?

A. Correct.

Q. Were Mr. Valladolid's job duties written down anywhere?

A. We have a little format list of the roustabout duties; but, no, it's – it's basically when you come out and come to work, we teach you what your duties are going to be; and then as we get into things that are new to a person, then we bring them in to help us and show them how it's done.

Q. And as to specific job duties around May and June of 2004, were there any job duties that were written down on paper, or is it all just in your head and in Mr. Valladolid's head?

A. Pretty much in our heads. That's –

Q. He'd show up for work out there on Hogan or Houchin and he knew what to do, or you knew what he was supposed to do? How did that work?

[41] A. He – well, he knew what to do based on conversations that we had at the end of the day or the beginning.

If there was going to be a change from the normal duties – say if I had him prepping and painting a particular section of the platform and something else came up in the morning when we were on the boat, we'd discuss it, and I'd say, well, you're going to do this today or that today instead of what you were working on.

Q. And as to the location that he worked, who told him when to go to Houchin and when to go to Hogan?

A. I did.

Q. Did you physically see him and tell him where to go?

A. Yes.

Q. Where would that meeting take place?

A. We would see each other on the pier before we get on the boat in the morning, and then on the boat ride we'd have discussions about that, and I'd tell him either go to Houchin – and I would go over there with him, and we'd look at a job and discuss how he's going to go about it; or if it was something he already knew exactly what to do, then I would just tell him, okay, you go to Houchin today, and you're going to do this and this, and he'd just go do it.

[42] Q. Were there time cards?

A. No. We just – we make out time sheets.

Q. When you say "we," is each individual responsible for his own time sheet?

A. Yes.

Q. So Mr. Valladolid would do a time sheet?

A. Correct.

Q. Is it weekly or two weeks at a time?

A. Two weeks.

Q. What does he do with it when he's done with it?

A. Gives it to me.

Q. What do you do with it?

A. And then I check it to make sure it's accurate, and then we fax them into the office.

Q. And where's the office?

A. In Oxnard. That's where the accounting office is.

Q. Not Santa Barbara?

A. No – well, at that time it was in Santa Barbara. I take that back.

Q. Let's go back to 2004 and be more specific as opposed to today.

A. Yeah; at that time it was in Santa Barbara, yes.

Q. Okay. And do you know whether or not the [43] company keeps these time sheets?

A. I believe they keep – I believe they do.

Q. Have you had any experience to back that up where you know they have your time sheets or Mr. Valladolid's time sheets?

A. No.

Q. Okay. So you just think that's the way it's done?

A. I've been told that that's how it's done.

Q. Who told you?

A. My boss, Bruce.

Q. Bruce who?

A. Johnson.

Q. What's his title?

A. Field superintendent.

Q. Does he get out to Hogan and Houchin much?

A. Occasionally, yeah.

Q. Would he know more about Mr. Valladolid's job duties than you, or would you know more?

A. No. I'd say we're equal in that capacity as far as knowing his work duties.

Q. Were you there every time Mr. Valladolid got on the crew boats, whether it was at the platforms or in Carpinteria harbor?

A. Most of the time, yeah.

[44] Q. And those times when you were with him, did you guys load those boats together?

A. No. The majority of the time the boats are loaded by the Venoco crew on the pier and the boat crew. They have two crew members on the boat that do all the loading and off-loading of equipment.

Q. And the Venoco crew works in Carpinteria?

A. Correct.

Q. They don't work out at the platforms?

A. No.

Q. And the boat crew, do they get off the boat and put the stuff on the platforms?

A. No. Then our crane operators take over at that point out there, and the boat crew will rig it up for our crane operator, and then he picks it off.

Q. And then reversing the situation, loading the crew boat out at the platforms, there's no Venoco crew?

A. No. We do the rigging for the crane operator, our guys, and then we load it on the boat.

Q. Was Mr. Valladolid one of those guys you're referring to?

A. Only on occasion. Those weren't his normal duties.

Q. Okay. Were you present at La Conchita on the day he died?

[45] A. Yes.

Q. Why were you at La Conchita facility on that day?

A. I was doing some electrical work.

Q. Were you in the same vicinity as the pipe and metal that Mr. Valladolid was supposed to be moving? Were you working in the same general area?

A. No. I was at a different spot in the plant and working on some electrical switches, so I glanced over and maybe saw him driving by, but I really wasn't

paying much attention to him at that point. I was pretty occupied with what I was doing.

Q. What time did you start that morning on the day he died?

A. Seven o'clock.

Q. Did Mr. Valladolid start at the same time?

A. I believe he did.

Q. What were his – what were Mr. Valladolid's job duties in the morning?

A. Well, when he was working for Scoop, what he was – at that time he was – he painted, I think, most of the day. And he was – like, say he was there to paint – and then I think there was some stuff to be moved, and he asked him to do it.

And then – and then I was – they said, you

* * *

[48] A. I believe they were all taken down after he passed away.

Q. Who found him, if you know, after he had died?

A. From what I was told, Mr. Boswell found him.

Q. You didn't see the accident actually occur?

A. No, or I'd have somehow managed to stop it.

Q. Okay.

A. I wish I would have had him offshore and it would have never happened.

Q. What is your present job title?

A. Maintenance supervisor.

Q. For what?

A. For offshore onshore, I'm the maintenance supervisor for all three facilities.

Q. Including the –

A. – La Conchita.

Q. La Conchita?

A. Yes.

Q. To your understanding, what is the nature of the business that your employer is in? Pacific Operators Offshore, what is their business?

A. Crude oil and gas sales – production and sales, I should say.

Q. And the job duties that you have, is that in support of that business?

[49] A. Yes.

Q. And the job duties that were assigned to Mr. Valladolid, were they in support of that business?

A. Yes.

Q. Did anybody talk to you prior to this deposition about the deposition?

A. No, other than I was supposed to show up here at three o'clock.

Q. And did you discuss your testimony at all with Mr. Thomas or with your supervisors?

A. No.

Q. Or with any of your coworkers?

A. No.

Q. Did you review any notes or any documents before testifying?

A. No.

MR. SPRINKLES: I have no other questions at this time.

MR. THOMAS: Just a little bit of clarification.

EXAMINATION

BY MR. THOMAS:

Q. The loading and unloading that Mr. Valladolid [50] may have participated in, can you estimate what percentage of the time? In other words, was it, you know, more or less than – let me ask this: Was it more or less than 5 percent of his time that he spent loading and unloading things either on the pier or on the platforms?

A. I would say probably 5 percent is a pretty close figure.

Q. Okay. You had said – so five – let me put it this way: How many hours a day did he work?

A. Twelve hours.

Q. Twelve hours a day. Okay. So would you estimate that he was spending more than a half hour, 45 minutes a day loading and unloading supplies?

A. No.

Q. Okay. What – how many minutes a day would he spend? Because when you say "5 percent," that seems a little high, but I'm trying to get to the –

A. Okay. Well –

MR. SPRINKLES: Let me object to your suggestion that it's a little high.

MR. THOMAS: It seems a little high to me.

MR. SPRINKLES: Well –

Q. BY MR. THOMAS: You tell me.

A. Both of you guys have got to understand that – [51] I mean, we don't, like, time it. You know, it's just something that gets done every day or – and usually there's a – the rig group is the one that does most of the cargo handling off and on the platform; but if stuff was to come down to the production deck for his use or other people's use, then he would handle it.

Q. How many days per week does that happen?

A. That would probably be a couple days a week and let's say an hour of his time each time total handling.

Q. All right. So two hours a week approximately?

A. Yeah.

Q. Handling?

A. Handling, yeah.

Q. Okay. Does that mean he's actually loading and unloading, or does that mean he's handling after it's been loaded?

A. That means he's loading, unloading, and handling it afterwards.

Q. How much of those hours on each day is he actually doing the loading and unloading?

A. Probably just a matter of maybe 15 minutes.

Q. So 15 minutes two times a week; is that accurate?

A. Yeah.

Q. Okay. My records show that he started working

* * *

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

LUISA L. VALLADOLID, Claimant, vs. PACIFIC OPERATIONS OFFSHORE, LLP, Employer; and, INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Carrier; and AIG CLAIM SERVICES, INC., Third Party Administrator, Respondents.	OALJ No. 2005-LHC-00343 OWCP No. 18-083701

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* * *

[16] Q. Did you live in Long Beach, too, at any time other than before '92?

A. Yes.

Q. When else did you live there?

A. Just in Long Beach.

Q. Did you live there in, say, the year 2000 to 2004?

A. No. I was living over here in Carpinteria. I moved to Carpinteria in 1992, and then –

Q. I'm sorry. Go ahead.

A. – from here, I moved to Oxnard.

Q. Did Mr. Valladolid have a trailer or anything like that to sleep in in Carpinteria?

A. Yes, at the plant La Conchita.

Q. Would he normally go out on a crew boat every day and then return on a crew boat every day back so he could sleep on land?

A. Yes.

Q. Where did you get on the crew boat to go out to the platforms?

A. Carpinteria pier.

Q. And did you ever ride the boat with Mr. Valladolid?

A. Yes.

Q. Mr. Magill, did he ride the boat with [17] Mr. Valladolid?

A. Yes.

Q. Did they ever load supplies on the crew boat to go out to the platform?

A. Yeah, the cargo run.

Q. The cargo run?

A. Yeah.

Q. How about equipment? Was it – would the company put equipment on the crew boat to get it out to the platforms?

A. Yes.

Q. How about materials?

A. Yes.

Q. Did you ever help bring the materials to the pier in Carpinteria?

A. No.

Q. Did Mr. – do you know whether or not Mr. Valladolid ever brought materials or equipment or supplies to the pier?

A. Yes.

Q. Did he ever put them on the crew boat?

A. No.

Q. Who put the stuff on the crew boat?

A. They put them on the baskets, and then they just – the crew from the pier, they use baskets and [18] lift them up and then put them on the boat.

Q. How often during a week would they – would Mr. Valladolid do this, get the stuff ready to get put on the boat?

A. Usually Mondays.

Q. So it happened once a week?

A. Yeah.

Q. And then would you guys ride the boat out with the supplies, materials, out to the platforms?

A. No. We got the second run because the cargo run.

Q. So the cargo run would go first or second?

A. The second run.

Q. Okay. Out at the platform, were talking about platforms named Hogan and Houchin?

A. Yes.

Q. Did you work on both of those?

A. Yes.

Q. Did Mr. Valladolid work on both of those?

A. Yes.

Q. Is a crane operator out there?

A. Yes.

Q. Is there any special crew out there to unload the crew boat?

A. Sometimes the roustabouts and sometimes the rig [19] hands.

Q. The rig hands?

A. Yeah.

Q. Was that one of the jobs that Mr. Valladolid had to do as a roustabout, to unload that crew boat?

A. No, not all the time, just only sometimes.

Q. Would it happen once a week that he would unload it?

A. Once, twice a week, yeah.

Q. When things needed to come back from Houchin and Hogan back to the shore, who put the stuff on the boat – on the crew boat to get it off the platform? What kind of job was that and who did it?

A. All depends what it is.

Q. Okay. Give me some examples.

A. If it's too heavy, we use the crane. If it's light, we use the baskets to put them on the air tugger.

Q. You'd use a basket and do what?

A. Air tugger.

Q. Air target (sic), what does that mean?

A. I don't know another name for that.

Q. Okay. Would Mr. Valladolid do this air target thing?

A. Sometimes.

Q. And would he assist the crane operator by [20] loading up stuff so that the crane could pick it up and move it over?

A. Yeah, a few times.

Q. When you say "a few times," is this a few times a week or –

A. Yeah; during the week, yeah.

Q. Okay. How about pipe? Did that crew boat move pipe back and forth out to the platforms and then old pipe come in from the platforms?

A. Yes.

Q. And how about valves? Old valves, new valves, did they move back and forth?

A. Yes.

Q. How about materials like paint or tools? Did that go back and forth?

A. Yes.

Q. Did Mr. Valladolid also help with the pipe and the tools and paint?

A. Not with the pipe, no.

Q. Not with the pipe?

A. Not with the pipe.

Q. So is that all by the crane operator?

A. Crane operators and the rig crew.

Q. And the rig crew?

A. Yeah.

[21] (Brief interruption in the proceedings.)

MR. SPRINKLES: Okay. We're going to go back on the record.

Q. BY MR. SPRINKLES: So an air tugger is some kind of – what? What is an air tugger?

A. What is it?

Q. Yeah. What does it do?

A. It got an air winch and it swings around, picks up the basket, swings over, and lower it down to the boat or pick them up from the boat to the platform.

Q. Okay. And the baskets, did the crane operator load the baskets?

A. Yeah.

Q. He loaded them or he moved them?

A. Well, it depends on what we're doing.

Q. Okay. Give me an example. Educate me.

A. Okay. The basket got chains, and then we just hook them up and sling them to the crane and lift them up, put them on the boat, or we get them from the boat to the platform.

Q. You did this sometimes?

A. I do that sometimes.

Q. Did Mr. Valladolid do that sometimes?

A. Sometimes he did.

Q. And did he do it once a week?

[22] A. Once, twice a week.

Q. So part of his job might be to move some of this material, equipment, but not pipe, off the boat on to the platform or move it back on to the boat?

A. Yes.

Q. Do you know Mr. Arturo Perez?

A. Yes.

Q. What was Mr. Perez's job?

A. He used to be an operator.

Q. Of what?

A. Operator of the platforms, Hogan.

Q. And as the operator, did anybody work for him? In other words, did he supervise anybody?

A. He was in charge of the platform, and he – and other roustabouts help him to clean up or fix little things.

Q. Did Mr. Valladolid ever work for Mr. Perez on occasion?

A. Yes.

Q. What kind of jobs would Mr. Valladolid do for Mr. Perez?

A. I saw him cleaning oil spills, fixing valves, or changing valves, stuff like that.

Q. Did Mr. Valladolid – when Mr. Valladolid was out there on the platform, did he paint?

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LUISA L. VALLADOLID, Claimant, v. PACIFIC OPERATORS OFFSHORE, LLP, Employer, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA adjusted by AIG CLAIM SERVICES, INC., Administrator.	OALJ Case No: 2005-LHC-00343 OWCP Case No: 18-83701 **MOTION FOR SUMMARY DECISION** 29 C.F.R. § 18.40; F.R.C.P. 56

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OFFICE OF ADMINISTRATIVE LAW JUDGES

LUISA L. VALLADOLID, Claimant, v. PACIFIC OPERATORS OFFSHORE, LLP, Employer, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA adjusted by AIG CLAIM SERVICES, INC., Administrator.	OALJ Case No: 2005-LHC-00343 OWCP Case No: 18-83701 **MOTION FOR SUMMARY DECISION** 29 C.F.R. § 18.40; F.R.C.P. 56

Defendants PACIFIC OPERATORS OFFSHORE, LLP and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Adjusted by AIG CLAIM SERVICES, INC., collectively referred to herein as

defendants, bring this Motion for Summary Decision pursuant to 29 C.F.R. § 18.40 and Federal Rule of Civil Procedure 56 on the grounds that there remains no triable issue of any material fact herein, and summary decision must be granted as a matter of law.

I. Procedural Background And Summary of Argument

Claimant Luisa Valladolid brings this death claim against defendants as a result of the death of her husband, Juan Valladolid (hereinafter "Decedent") during his employment with Pacific Operators Offshore, LLP (hereinafter referred to as "Employer"). Mr. Valladolid was [2] employed by Employer as a "roustabout" and performed a substantial percentage of his duties on "Platform Hogan," an oil drilling platform located approximately five miles off the shore of southern California. [UMF Nos. 26, 27]. However, for nearly one month prior to his death, decedent was assigned to work on a project at Employer's land-based "La Conchita" oil processing plant. [UMF No. 28]. The function of the La Conchita plant was to process the crude oil transported directly to the plant by pipeline from the offshore platforms [UMF No. 25]. The La Conchita plant is not contiguous with any body of water and is separated from the Pacific Ocean by railway tracks, a highway and a beach. [UMF No. 33]. Moreover, claimant's duties at the La Conchita plant were not maritime in nature. [UMF No. 36]. The accident resulting in decedent's death occurred at the land-based La Conchita plant. [UMF Nos. 28, 29, 31].

Defendants submitted their LS-202 dated June 4, 2004 [UMF No. 2], and submitted their LS-207 controverting the claim on or about June 14, 2004. [UMF No. 3]. A claim for California State workers' compensation benefits dated June 3, 2004 was submitted by Employer on behalf of claimant, and Employer/ Carrier presently are providing death benefits to claimant under the California State Workers' Compensation Act.. [UMF Nos. 4, 49]. Claimant submitted her LS-262 dated July 22, 2004. [UMF No. 5].

Claimant initially was represented in connection with the instant matter by Diane Middleton. [UMF No. 7]. On or about February 7, 2006, claimant's counsel Diane Middleton informed defendants' counsel that she would be bringing the instant claim under the Outer Continental Shelf Lands Act extension to the Longshore Act. [UMF No. 6]. Luisa Valladolid is not claiming injury under § 901 et. seq. of the LHWCA except as it may have occurred under 43 U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act. [UMF No. 22, 45].

This matter initially was set for trial on the May 16, 2005 calendar call. [UMF No. 8]. On or about September 14, 2005, claimant substituted Charles Naylor as her counsel, replacing Diane Middleton. [UMF No. 12]. Trial in this matter was continued from the May 16, 2005 calendar call to the October 17, 2005 calendar call; and again to the April 24, 2006 calendar call; and again to [3] the August 28, 2006 calendar call. At claimant's request, the August 28, 2006 trial date was vacated and the case has been

assigned to the December 11, 2006 calendar call. [UMF No. 24].

Defendants will show herein that claimant cannot satisfy the jurisdictional requirements for coverage of decedent's death under either the Longshore Act or under the Outer Continental Shelf Lands Act extension to the Act. Accordingly, summary decision must be granted as a matter of law.

A. Defendants Will Show That Claimant's Deemed Admissions Establish There Is No Jurisdiction Under the Outer Continental Shelf Lands Act Extension To The Longshore And Harbor Workers' Compensation Act

As will be shown herein, on February 25, 2005, defendants served requests for admissions on claimant asking her to admit to certain jurisdictional issues which, if admitted, would establish that there exists no jurisdiction for this claim under the Outer Continental Shelf Lands Act (hereinafter "OCSLA") extension to the Act. Claimant failed to respond to the requests for admissions.

As a result of claimant's failure to timely respond to the requests for admissions, the matters of which admissions were requested are now deemed admitted by operation of law. 29 C.F.R. 18.20(b), F.R.C.P. 36(a). Despite having nearly one year to do so, claimant has never moved to withdraw or set aside the deemed admissions, and it is mandatory that all such requests to have deemed admissions set aside must be made

by noticed motion. Matters deemed admitted under § 18.20 are conclusively established unless the Administrative Law Judge *on motion* of the responding party permits withdrawal or amendment of the admission. 29 C.F.R. 18.20(e), F.R.C.P. 36(b).

Courts have routinely granted summary judgment predicated upon default admissions where no such motion for withdrawal of the deemed admissions is made prior to the motion for summary judgment. See, *United States v. Kasuboski*, 834 F.2d 1345 (7th Cir. 1987); *Kathryn Cook v. Allstate Insurance Co.*, 337 F.Supp.2nd 1206 (C.D. CA 2004); *Harold Drennen v. Sentinel Real Estate Corp.*, 2005 U.S. Dist. Lexis 32505 (ID. Ariz. 2005); *Tillamook Country Smoker, Inc. v.* [4] *Tillamook County Creamery Association*, 333 F.Supp.2d 975 (D. OR. 2004); *Wright v. Paul Revere Life Ins. Co.*, 291 F.Supp.2d 1104 (C.D. CA 2003).

As defendants will show below, the matters deemed admitted by claimant conclusively establish that there is no remaining triable issue of material fact with respect to any claim brought under the OCSLA extension to the Longshore Act.

B. Defendants Will Show That There Is No Jurisdiction For This Claim Under The Longshore Act Or Under The OCSLA Extension To The Longshore Act

Luisa Valladolid is not claiming injury under § 901 et. seq. of the LHWCA except as it may have occurred under 43 U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act. [UMF Nos. 6, 45].

However, to eliminate any possible triable issue of fact in this matter, defendants will show herein that decedent's job duties were not maritime in nature; that the accident resulting in his death did not occur over navigable water or over any of its extensions under the Act; and that he cannot show either both situs or status. Accordingly, defendants will conclusively establish that there is no remaining triable issue of material fact with respect to any potential claim brought under the Longshore Act.

II. Summary Of Facts

On June 2, 2004, Decedent Juan J. Valladolid was employed as a "roustabout" by Employer.[UMF Nos. 1, 26]. Employer is a company whose primary business operations include oil exploration and extraction. The business operations at its oil processing plant facility located at 7459 Pacific Coast Highway, Ventura, CA, consisted of the intake of crude oil from offshore platforms via pipeline, the separation of water from the crude oil, the purification of the separated water, and the temporary storage of crude oil in tanks. Oil, natural gas and produced water were received from offshore platforms Hogan and Houchin. [UMF No. 25]. This oil processing plant is known as Employer's "La Conchita" plant facility. [UMF No. 26].

Decedent's job duties with the employer primarily involved performing maintenance and repair duties at Platform Hogan. Platform Hogan is located more

than three miles off the coast of southern California on the Outer Continental Shelf. [UMF No. 27]. Decedent would access [5] Platform Hogan by boarding a crew boat at Casitas Pass Pier. Casitas Pass Pier is located approximately three miles from the La Conchita plant facility. [UMF No. 27]. Decedent's regular duties on Platform Hogan included picking up trash and emptying trash barrels and office wastebaskets, washing the decks and well bay, assisting in repairing wellhead safety equipment, piping projects, painting, and assisting on the pipe deck with crane loads going on or off the platform. [UMF No. 27]. His duties with Employer also included working at the onshore La Conchita plant, where he would perform various maintenance and clean-up duties such as painting, sandblasting, pulling weeds, cleaning drain culverts, using a forklift to unload trucks and using a forklift to transport equipment and debris throughout the plant. [UMF No. 27].

Decedent was scheduled and assigned to work at the La Conchita plant during the period from May 5, 2004 through June 5, 2004 to assist in an ongoing project there. During this time period prior to his death on June 2, 2004, decedent worked only at the La Conchita plant and did not work on Platform Hogan or on any other offshore platform. [UMF No. 28]. Specifically, on June 2, 2004, decedent was assigned to work at the employer's La Conchita plant, and was not present on Platform Hogan or any other offshore platform.[UMF No. 28].

At approximately 4:00 p.m. on June 2, 2004, decedent was directed by his supervisor, Gordon

"Scoop" Boswell, to go to the rear yard of the La Conchita plant with a forklift and to clean up some debris. [UMF No. 29]. At approximately 5:15 p.m. on the same date, claimant was found next to a plantain tree approximately ten feet off of one of the plant facility service roads. He was lying on his back with a forklift resting on his abdominal and chest area. He was pronounced dead at the scene. [UMF No. 29]. Evidence at the scene of the accident indicated that decedent had pulled the forklift off of the service road for the purpose of harvesting some plantains, that he had been standing on the elevated tines of the forklift in order to cut a stalk of plantains from a tree, and that he had somehow fallen in front of the forklift and was run over by it. [UMF No. 30]. The harvesting of plantains along the service roads in the La Conchita plant were not related to decedent's employment duties with Employer. [UMF No. 30].

[6] The location of the accident resulting in decedent's death was approximately ten feet off of the service road connecting the La Conchita plant main facility area to the rear yard of the plant. [UMF No. 31]. The La Conchita plant, and the accident scene specifically, were separated from the Pacific Ocean by railroad tracks, a highway and a beach. [UMF No. 32]. The La Conchita plant is not over or contiguous with any body of water and does not possess any area to unload materials from a dock, barge, floating platform, floating island, ship or other type of vessel. [UMF No. 33]. The La Conchita plant does not possess any adjoining pier, wharf, dry dock, terminal,

building way, marine railway, or any other area used at any time for the loading, unloading, repairing, dismantling, or building of any vessel. [UMF No. 34]. The crude oil was received into the plant via pipeline from an offshore platform and was processed and stored in temporary storage tanks before being transported away from the plant by pipeline.[UMF No. 35].

The operations at the La Conchita plant, during the tenure of decedent's employment there, never involved the loading or unloading of anything to or from any marine vessel, and never involved the maintenance or repair of any marine vessel. [UMF No. 35]. Decedent's job duties with the employer never involved loading, unloading, repairing or building a vessel. [UMF No. 36]. The accident resulting in decedent's death did not occur on or over the Outer Continental Shelf, nor was claimant was [sic] traveling to or from the Outer Continental Shelf or anything on or over the Outer Continental Shelf. [UMF Nos. 37 and 38]. The location of the accident was approximately ten feet off of the service road connecting the La Conchita plant main facility area to the rear yard of the plant. The La Conchita plant is a land-based facility used to process crude oil and is separated from the Pacific Ocean by railway tracks, a highway and a beach. [UMF Nos. 1, 29, 31, 39].

Decedent Juan Valladolid was never present on Platform Hogan on the date of death. [UMF Nos. 28, 40]. Decedent was not scheduled to be on Platform Hogan or any other Outer Continental Shelf Lands Act covered site on the date of death. [UMF No. 28,

44]. Decedent did not do any work on any barges, floating platforms, floating islands, ships, or other type of vessel [7] located on the outer continental shelf on the date of death. [UMF No. 28, 41]. Decedent was never present on any barges, floating platforms, floating islands, ships, or other type of vessel located on the outer continental shelf on the date of death. [UMF No. 28, 42]. Decedent was not en route to a barge, floating platform, floating island, ship, or other vessel located on the outer continental shelf when he was killed. [UMF No. 28, 43]. All of decedent's job duties on the date of death were performed on the employer's La Conchita land site. [UMF No. 28, 46].

Claimant Luisa Valladolid is not claiming injury under § 901 et. seq. of the LHWCA except as it may have occurred under 43 U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act. [UMF No. 45].

On February 25, 2005, defendants served requests for admissions on claimant's attorney Diane Middleton. The requests were served by mail. The responses to the requests for admissions were due April 1, 2005. [UMF No. 9].

Request For Admission No. 1 asked claimant to admit that Juan Valladolid has no other dependents under the Longshore and Harbor Workers' Compensation Act other than Luisa L. Valladolid. [UMF No. 16]. Request For Admission No. 2 asked claimant to admit that Juan Valladolid was never present on Platform Hogan on the date of death. [UMF No. 17]. Request For Admission No. 3 asked claimant to admit

that Juan Valladolid did not do any work on any barges, floating platforms, floating islands, ships, or other type of vessel located on the outer continental shelf on the date of death. [UMF No. 18.] Request For Admission No. 4 asked claimant to admit that Juan Valladolid was never present any barges, floating platforms, floating islands, ships, or other type of vessel located on the outer continental shelf on the date of death. [UMF No. 19]. Request For Admission No. 5 asked claimant to admit that Juan Valladolid was not en route to a barge, floating platform, floating island, ship, or other vessel located on the outer continental shelf when he was killed. [UMF No. 20]. Request For Admission No. 6 asked claimant to admit that Juan Valladolid was not scheduled to be on Platform Hogan or any other Outer Continental Shelf Lands Act covered site on the date of death. [UMF No. 21]. Request For Admission No. 7 asked [8] claimant to admit that Luisa Valladolid is not claiming injury under § 901 et. seq. of the LHWCA except as it may have occurred under 43 U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act. [UMF No. 22]. Request For Admission No. 8 asked claimant to admit that all of Juan Valladolid's job duties on the date of death were performed on the employer's La Conchita land site. [UMF No. 23].

Claimant's attorney Diane Middleton requested an extension of time to respond to the request for admissions and defendants granted said request to permit claimant to submit her responses to request for admissions on or before April 8, 2005. [UMF No. 10].

Claimant's attorney Diane Middleton, requested a second extension of time to respond to the request for admissions and defendants granted said request to permit claimant to submit her responses to request for admissions on or before May 7, 2005.[UMF No. 11].

On or about September 14, 2005, claimant substituted Charles Naylor as her counsel, replacing Diane Middleton. [UMF No. 12]. Defendants' counsel received a copy of a letter from Diane Middleton to Charles Naylor dated September 16, 2005 indicating that she had forwarded Charles Naylor defendants' discovery requests, together with additional file materials. [UMF No. 13]. Mr. Naylor wrote a letter to Judge Mapes dated September 14, 2005 acknowledging that the responses to defendants' discovery requests were past due, but did not request additional time to respond. [UMF No. 13]. No response to defendants' request for admissions has been received by defendants' counsel.[UMF No. 14]. No motion to set aside the deemed admissions has ever been submitted by claimant's counsel. [UMF No. 15]. Claimant failed to avail herself of the remedy of moving to set aside the deemed admissions despite having nearly one year to do so. [UMF No. 47].

Dismissal of this claim by the Administrative Law Judge on summary decision will not affect claimant's entitlement to workers' compensation benefits under the California Labor Code. [UMF No. 48]. Defendants presently are paying benefits to claimant under the California State Workers' Compensation Act. [UMF No. 49].

[9] **III. Argument**

A. The Deemed Admissions Form A Proper Basis For Summary Decision

It is undisputed that claimant did not timely respond to the requests for admissions served by defendants, and that she failed to move to set aside the deemed admissions. [UMF Nos. 14, 15, 47].

29 C.F.R. § 18.20(b) provides:

> (b) Each matter of which an admission is requested is admitted unless, within thirty (30) days after service of the request or such shorter or longer time as the administrative law judge may allow, the party to whom the request is directed serves on the requesting party:
>
> (1) A written statement denying specifically the relevant matters of which an admission is requested;
>
> (2) A written statement setting forth in detail the reasons why he or she can neither truthfully admit nor deny them; or
>
> (3) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

Moreover, § 18.20(e) provides:

> (e) Any matter admitted under this section is conclusively established unless the administrative law judge *on motion* permits

withdrawal or amendment of the admission. [Emphasis added.]

Failure of a party to timely respond to requests for admissions results in an automatic admission that conclusively establishes the matter of which the admission was requested. No motion is necessary – the admission is self-executing. 29 C.F.R. §§18.20(b), (e); F.R.C.P. 36; *Kathryn Cook v. Allstate Ins. Co.*, 337 F.Supp.2d 1206, 1210 (C.D. CA 2004). Failure to respond to a request for admission can effectively deprive a part of the opportunity to contest the merits of his case. *In re Carney*, 258 F.3d 415, 421 (5th Cir. 2001).

The provisions of Fed. R. Civ. P. 36 allow litigants to request admissions as to a broad [10] range of matters, including ultimate facts, as well as applications of law to fact. The purpose of the rule is to expedite resolution of litigation by narrowing the range of issues left for decision. *Tillamook Country Smoker, Inc. v. Tillamook County Creamery Association*, 333 F.Supp.2d 975, 984 (D. OR 2004).

The proper procedural vehicle through which to request withdrawal of deemed admissions is a motion for withdrawal. 29 C.F.R. § 18.20(e); F.R.C.P. 36(b). The court may only withdraw admissions *on motion* of a responding party; therefore, a formal motion is mandatory. *United States v. Kasuboski*, 834 F.2d 1345, 1350, (7th Cir. 1987); *Kalis v. Colgate-Palmolive* Co.,231 F.3d 1049, 1059 (7th Cir. 2000); *Harold Drennen v. Sentinel Real Estate Corp.*, 2005 U.S. Dist.

Lexis 32505 (D.Ariz. 2005). The rule that admissions cannot be withdrawn or amended except by leave of court after a noticed motion applies to both express admissions and to those resulting from a failure to respond. *999 v. C.I.T. Corp.*, 776 F.2d 866, 869 (9th Cir. 1985).

Where there has been no previous motion to withdraw or amend deemed admissions, a party may not, in opposition to motion for summary judgment, attempt to attack issues established by the deemed admissions. *Tillamook Country Smoker, Inc. v. Tillamook County Creamery Association*, *supra.*, at p. 984. An admission that is not withdrawn or amended cannot be refitted by contrary evidence or ignored by the court simply because it finds the evidence presented by the party against whom the admission operates more credible. *Id.*, at p. 984; *Kathryn Cook v. Allstate Ins. Co.*, *supra.*, at p. 1210. Deemed admissions trump all such conflicting evidence. *Harold Drennen v. Sentinel Real Estate Corp.*, *supra.*, at p. 3. See also, *United States v. Kasuboski*, *supra.*, at p. 1350. "Unless the party securing an admission can depend on its binding effect, he cannot safely avoid the expense of preparing to prove the very matters on which he has secured an [11] admission, and the purpose of the rule is defeated." *Tillamook Country Smoker, Inc. v. Tillamook County Creamery Association*, *supra.*, at p. 984, citing to the Fed. R. Civ. P. 36 Advisory Committee Notes.

Courts have routinely granted summary judgment predicated upon default admissions where no

motion for withdrawal of the deemed admissions was made prior to the motion for summary judgment. See, *United States v. Kasuboski*, 834 F.2d 1345 (7th Cir. 1987); *Kathryn Cook v. Allstate Insurance Co.*, 337 F.Supp.2nd 1206 (C.D. CA 2004); *Harold Drennen v. Sentinel Real Estate Corp.*, 2005 U.S. Dist. Lexis 32505 (D. Ariz. 2005); *Tillamook Country Smoker, Inc. v. Tillamook County Creamery Association, supra.*; *Wright v. Paul Revere Life Ins. Co.*, 291 F.Supp.2d 1104 (C.D. CA 2003).

Here, claimant failed to respond to the properly serve [sic] responses to the requests for admissions and has made no motion to set aside the deemed admissions despite having had nearly one year to do so. Accordingly, the matters admitted therein are conclusively established and form a proper factual basis for the instant motion for summary decision.

B. There Is No Jurisdiction Under The Longshore Act[1]

The Longshore and Harbor Workers' Compensation Act (hereinafter "the Act") provides compensation for the death or disability of a person who was engaged in "maritime employment," *if* the death or

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[1] Although claimant has admitted that she is not claiming injury under § 901 et. seq. of the LHWCA except as it may have occurred under 43 U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act [UMFNo. 45], defendants address potential jurisdiction under 33 USC §901, et seq., in order to dispose of all potential jurisdictional issues.

disability results from an injury sustained upon the navigable waters of the United States or any adjoining pier or other area customarily used by the injured workers' employer in loading, unloading, repairing, or building a vessel. 33 U.S.C. §§ 902(3), 903(a). Thus, one [12] bringing a claim under the Act must satisfy both a "situs" and a "status" test. *Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 415-416. "Situs and status must coincide before coverage will attach. Each test acts as a control upon the other so as to diminish the potential for undue expansion of coverage." *Brady-Hamilton Stevedore Company v. Herron*, 568 F.2d 137, 140 (9th Cir. 1978).

The facts here are undisputed that decedent's fatal injuries did not occur over actual navigable waters, which would have been sufficient to confer jurisdiction under both § 903(a) and §902(3) of the Longshore Act. [UMF Nos. 29, 31, 33]. Because his fatal accident occurred on land, decedent is subject to both the status and situs requirements necessary to invoke jurisdiction under the Act. As will be shown herein, decedent possessed neither status nor situs in relation to his fatal accident and therefore claimant cannot establish jurisdiction under 33 U.S.C. §§ 901, et seq.

1. Status

In order to meet the "status" requirement, an employee must be engaged in " . . . maritime employment, including any longshoreman or other person

engaged in longshoring operations, and any harbor-worker including a ship repariman [sic], shipbuilder, and ship-breaker . . . " 33 U.S.C. § 902(3). Generally, an employee satisfies the "status" requirement if he is engaged in work which is integral to the loading, unloading, constructing, or repairing of vessels. *Chesapeake & Ohio Ry. Co. v. Schwalb*, (1989) 493 U.S. 40, 45. The 1972 amendments to the Act were not meant to cover employees who are not engaged n [sic] loading, unloading, repairing or building a vessel. *McGray Const. Co. v. Director, O.W.C.P.*, 181 F.3d 1008, 1013 (9th Cir. 1999). Maritime employment is "an occupation test that focuses on loading and unloading." *Id.*, at p. 1013 (citation omitted.)

An employee's status for purposes of determining coverage under the Act is not [13] determined only by this [sic] duties at the moment of injury. Rather, courts have focused on an employee's occupation, rather than his duties at the time of the injury, in determining whether the status requirement is satisfied. *Northeast Marine Terminal v. Caputo*, (1977) 432 U.S. 249, 273.Congress intended to cover " . . . persons whose employment is such that they spend at least some of their time in indisputably longshoring operations and who, without the 1972 Amendments, would be covered for only part of their activity." *Id.*, at p. 273.

Decedent's job duties with the employer primarily involved performing maintenance and repairs on Platform Hogan and, to a lesser extent, at Employer's onshore La Conchita plant, for an employer whose

primary business operations were oil exploration and extraction. As defendants will show, neither of these occupations had any connection whatsoever with the loading, unloading, repair or maintenance of marine vessels, and as Employer's business operations involved the extraction of oil from the Outer Continental Shelf, they were not performed in the context of maritime commerce. Accordingly, neither claimant's duties on Platform Hogan nor his duties at the La Conchita plant establish the requisite status requirement for coverage under the Act.

a. Duties On Platform Hogan

Although decedent did not perform any work on Platform Hogan on the date of his fatal accident, and had not done so for approximately one month prior to his death, decedent's regular job duties with the employer *primarily involved* performing maintenance and repair on Platform Hogan, located more than three miles offshore in the Pacific Ocean on the Outer Continental Shelf. [UMF Nos. 27, 28]. These duties included picking up trash and emptying trash barrels and office wastebaskets, washing the decks and well bay, assisting in repairing wellhead safety [14] equipment, piping projects, painting, and assisting on the pipe deck with crane loads going on or off the platform. [UMF No. 27].

Offshore drilling operations are not "maritime activity" nor is any task essential to offshore drilling "maritime employment" for purposes of coverage

under 33 U.S.C. §§ 901, et seq. *Herb's Welding, Inc. v. Gray*, (1985) 470 U.S. 414, 422.

In *Herb's Welding* Gray, a welder on an offshore oil rig, sustained an injury to his knee and sought benefits under the Longshore Act. The area in which he worked was located partly in Louisiana territorial waters and partly on the Outer Continental Shelf. He worked both on platforms in Louisiana territorial waters and on platforms located on the Outer Continental Shelf. He worked exclusively as a welder, building and replacing pipelines and doing general maintenance work on the platforms. The injury to Gray occurred while he was working in Louisiana waters. Gray sought benefits under 33 U.S.C. § 901, et seq. The administrative law judge held that Gray did not satisfy the status requirement under the Act because his work was totally involved in the exploration for, and development and transmission of, oil and gas from submerged lands, and as such, it was not relevant to traditional maritime law and lacked any significant maritime connection. The Benefits Review Board reversed on other grounds, concluding that irrespective of the nature of his employment, and irrespective of the fact that the injury occurred in Louisiana state waters, Gray could recover longshore benefits under the OCSLA extension to the Act. The Benefits Review Board reaffirmed its position after the case was remanded and petitioners sought review in the Fifth Circuit Court of Appeals. The Fifth Circuit affirmed, relying directly on the Longshore Act and not on the OCSLA extension. The Fifth

Circuit Court of Appeals found that Gray's work bore a realistically significant relationship [15] to traditional maritime activity involving navigation and commerce on navigable waters as it was an integral part of the offshore drilling operations. The Supreme Court reversed, holding that Congress did not intend to extend the Longshore and Harbor Workers' Compensation Act to workers such as Gray, and rejecting the appellate court's finding that offshore drilling is maritime commerce and that any task related to those operations is maritime employment for purposes of determining status under the Act.. *Id.*, at pp. 420-421.

> We have never read "maritime employment" to extend so far beyond those actually involved in moving cargo between ship and land transportation. Both *Caputo* and *P. C. Pfeiffer Co.* make this clear and lead us to the conclusion that Gray was not engaged in maritime employment for purposes of the LHWCA.

Id., at p. 424.

The Supreme Court's characterization of Gray's duties in ***Herb's Welding*** could apply equally to decedent Valladolid here:

> Gray was a welder. His work had nothing to do with the loading or unloading process, nor is there any indication that he was even employed in the maintenance of equipment used in such tasks. Gray's welding work was far removed from traditional LHWCA

> activities, notwithstanding the fact that he unloaded his own gear upon arriving at a platform by boat. [Reference to transcript omitted.] He built and maintained pipelines and the platforms themselves. There is nothing inherently maritime about those tasks. They are also performed on land, and their nature is not significantly altered by the marine environment, n11 particularly since exploration and development of the Continental Shelf are not themselves maritime commerce.

Id., at p. 425.

Based upon the clear precedent as promulgated by Supreme Court in *Herb's Welding*, decedent Valladolid cannot be said to possess status for purposes of securing jurisdiction under the Longshore Act. Accordingly, any claim brought by Luisa Valladolid for benefits under 33 U.S.C. § 901, et seq. must fail for lack of jurisdiction.

b. Duties At La Conchita Processing Plant

[16] Decedent's duties also included, to a lesser extent, working at the onshore La Conchita plant, where he would perform various maintenance and clean-up duties such as painting, sandblasting, pulling weeds, cleaning drain culverts, using a forklift to unload trucks and using a forklift to transport equipment and debris throughout the plant. [UMF No. 27]. In fact, for approximately one month prior to the

accident resulting in his death, decedent was assigned to the La Conchita plant to assist in an ongoing project there involving the retrofitting of a water processing tank. During the time period between May 5, 2004 and the date of his death, decedent worked only at the La Conchita plant and did not work on Platform Hogan or on any other offshore platform. Specifically, on June 2, 2004, decedent was assigned to work at the employer's La Conchita plant, and was not present on Platform Hogan or any other offshore platform. [UMF No. 28]. His duties during this period of time primarily included assisting the welders, painting, moving scaffolding and moving debris. [UMF No. 28].

The La Conchita plant does not possess any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or any other area used at any time for the loading, unloading, repairing, dismantling, or building of any vessel. [UMF No. 34]. The operations at the La Conchita plant, during the tenure of decedent's employment there, never involved the loading or unloading of anything to or from any marine vessel, and never involved the maintenance or repair of any marine vessel [UMF No. 35], and *decedent's job duties with the employer never involved loading, unloading, repairing or building a vessel.* [UMF No. 36].

The 1972 amendments to the Act were not meant to cover employees who are not engaged in loading, unloading, repairing or building a vessel, and did not eliminate any requirement of a connection with the loading or construction of ships. *McGray Construction*

Company v. Director, [17] *OWCP*, 181 F.3d 1008, 1012-1013 (9th Cir. 1999). The status test is an occupation test focusing on loading and unloading. *Herb's Welding, Inc. v. Gray, supra.*, at p. 423. Moreover, offshore drilling operations are not "maritime activity" nor is any task essential to offshore drilling "maritime employment" for purposes of coverage under 33 U.S.C. §§ 901, et seq. *Id.,* at p. 422. Nor do the exploration and development of the Continental Shelf constitute maritime commerce. *Id.,* at p. 425. For these reasons, decedent cannot be said to possess status for purposes of securing jurisdiction under the Longshore Act. Accordingly, any claim brought by Luisa Valladolid for benefits under 33 U.S.C. § 901, et seq. must fail for lack of jurisdiction.

2. Situs

In order to meet the situs requirement under the Act, claimant must establish that the injuries resulting in decedent's death occurred upon the navigable waters of the United States, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling or building a vessel. 33 U.S.C. § 903(a). Thus, to be a covered situs under the Act, a landward site must be either one of the sites specifically enumerated in § 903(a), or an " . . . adjoining area customarily used by an employer in loading, unloading, repairing, dismantling or building a vessel." *Northeast Marine Terminal Co. v. Caputo*, (1977) 432 U.S. 249, 263-264.

The situs test is not met merely because the injury occurred adjacent to water. *Nelson v. Guy F. Atkinson Construction Co.*, 29 BRBS 39 (1995), affd sub nom., *Nelson v. Director, OWCP*, 101 F.3d 706 (9th Cir. 1996) (Table). Where, as here, there is no evidence that the landward injury site was used for maritime activities at the time of the injury, situs will not be found. *Id.*

The facts here clearly demonstrate that the La Conchita plant did not possess and was not [18] itself one of those sites specifically enumerated in §903(a), i.e., a pier, wharf, dry dock, terminal, building way, marine railway. [UMF Nos. 25, 32-35]. Nor can it be said that the La Conchita plant is an " . . . adjoining area customarily used by an employer in loading, unloading, repairing, dismantling or building a vessel," as contemplated by the *Caputo* court. *Id.*

The Ninth Circuit has established a "functional relationship" test which has been widely applied to assist in determining whether a particular site is an "adjoining area" within the meaning of 33 U.S.C. §903(a). *Brady-Hamilton Stevedore Company v. Herron*, 568 F.2d 137, 141 (94 Cir. 1978). The *Herron* court held:

> In order to further Congress' goal of uniform coverage, the phrase "adjoining area" should be read to describe a functional relationship that does not in all cases depend upon physical contiguity. Consideration should be given to the following factors, among others, in determining whether or not a site is an

> "adjoining area" under section 903(a): the particular suitability of the site for the maritime uses referred to in the statute; whether adjoining properties are devoted primarily to uses in maritime commerce; the proximity of the site to the waterway; and whether the site is as close to the waterway as is feasible given all of the circumstances in the case.

Thus, although under the 9th Circuit's analysis actual physical contiguity with navigable water is not necessary for a site to constitute an "adjoining area," there must be a maritime nexus and the site must be customarily used for maritime activity. *Id.*, at p. 140; *Arjona v. Interport Maintenance Company, Inc.*, 34 BRBS 15 (2000).

a. Application Of *Herron* Test

An application of the *Herron* test to the facts of this case demonstrate that the La Conchita plant is not a covered situs.

The first prong of the *Herron* test is " . . . the particular suitability of the site for maritime uses referred to in the statute." *Brady-Hamilton Stevedore Company v. Herron, supra.*, at p. 141. Employer's primary business operations include oil exploration and extraction. [UMF No. 25]. [19] The La Conchita plant, and the accident scene specifically, are not over or contiguous with any body of water and does not possess any area to unload materials from a dock, barge, floating platform, floating island, ship or other type of vessel. The La Conchita plant is separated

from the Pacific Ocean by railway tracks, a highway and a beach. [UMF No. 33]. The La Conchita plant does not possess any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or any other area used at any time for the loading, unloading, repairing, dismantling, or building of any vessel. The nearest sea-port is Port Hueneme, located approximately 16 miles from the La Conchita plant. [UMF No. 34]. The operations at the La Conchita plant, during the tenure of decedent's employment there,never involved any operations involving the loading or unloading of anything to or from any marine vessel, and never involved the repair of any marine vessel. The crude oil was received into the plant via pipeline from an offshore platform and was processed and stored in temporary storage tanks before being transported away from the plant by pipeline. [UMF No. 35].

These facts demonstrate that there is *nothing* about the La Conchita plant that is suitable for any of the maritime uses specified by the Act. The La Conchita plant was specifically designed to accommodate the processing of crude oil received from offshore platforms by pipeline. As noted above, the exploration and development of the Continental Shelf and related offshore drilling operations are not maritime commerce. *Herb's Welding, Inc. v. Gray, supra.*, at pp. 425. The first prong of the *Herron* test therefore fails.

The second prong of the *Herron* test is whether adjoining properties are devoted primarily to uses in maritime commerce. *Id.*, at p. 141. The facts show that the nearest sea-port is more than 15 miles away

from the La Conchita plant. [UMF No. 34]. There are no businesses engaged in [20] shipping operations or other maritime activities within at least a one-mile radius of the La Conchita plant. The nearest business is a combination gas station/convenience store which is located approximately one-half mile from the La Conchita plant. [UMF No. 32]. The second prong of the *Herron* test also fails.

The third prong of the *Herron* test is the " . . . proximity of the site to the waterway." *Id.*, at p. 141. The La Conchita plant, and the accident scene specifically, were separated from the Pacific Ocean by railroad tracks, a highway and a beach. [UMF No. 32]. It is not over or contiguous with any body of water and does not possess any area to unload materials from a dock, barge, floating platform, floating island, ship or other type of vessel. [UMF No. 33]. Again, the *Herron* test fails.

The fourth and last prong of the *Herron* test is whether the site is as close to the waterway as is feasible given all of the circumstances in the case. Here, the proximity of the La Conchita plant to the Pacific Ocean is necessitated by the connection of the plant to the incoming pipelines transporting crude oil from the offshore platforms Hogan and Houchin. There is no maritime purpose for the proximity of the plant to the Pacific Ocean, and as noted above, the plant is separated from the ocean by railroad tracks, a highway and a beach. [UMF No. 33]. Again, the *Herron* test fails to establish any basis for determining that the La Conchita plant is a covered situs.

b. Situs Determined By "Moment Of Injury"

Situs under § 903(a) is determined by the nature of the place of work *at the moment of injury*. *Nelson v. Guy F. Atkinson Construction Co., supra.*. In other words, situs must be determined by the precise location of decedent's fatal accident, not by the locations where [21] decedent worked in the past or might have worked in the future.[2]

The location of the accident resulting in decedent's death was approximately ten feet off of the service road connecting the La Conchita plant main facility area to the rear yard of the plant. [UMF No. 31]. For these reasons, the La Conchita plant is not a maritime situs, and accordingly, claimant cannot establish the requisite jurisdiction under the Act.

C. There Is No Jurisdiction Under The OCSLA Extension To The Longshore And Harbor Workers' Compensation Act

Having established that claimant cannot meet the jurisdictional requirements of the Longshore Act itself, we now turn to her claim brought under the Outer Continental Shelf Lands Act extension to the Act.

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[2] It is conceded that decedent worked on Platform Hogan approximately one month prior to his death, and that he would have worked on Platform Hogan again had he not met his untimely demise.

In 1953, Congress enacted the Outer Continental Shelf Lands Act (hereinafter "OCSLA"), codified as 43 U.S.C. §1331, et. seq. In so doing, Congress extended the benefits and provisions of the Longshore and Harbor Workers' Compensation Act to those workers who suffer disability or death as a result of an injury occurring as a result of "operations conducted on the Outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf." 43 U.S.C. §1333(b). The Outer Continental Shelf (hereinafter "OCS") includes submerged land lying "more than three miles offshore." 43 U.S.C. §§ 1331(a), 1301; *Herb's Welding, Inc. v. Gray* (1985) 470 U.S. 414, 419.

The provisions of OCSLA most relevant to this action are 43 U.S.C. §1333(a)(1) and 43 U.S.C. §1333(b).

[22] 43 U.S.C. §1333(a)(1) provides, in relevant part:

> The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting

such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: Provided, however, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

43 U.S.C. §1333(b) provides:

(b) With respect to disability or death of an employee resulting from any injury occurring as the result of operations ***conducted on the outer Continental Shelf*** for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act [Longshore and Harbor Workers' Compensation Act] [33 USCS §§ 901 et seq.]. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act [Longshore and Harbor Workers' Compensation Act] [33 USCS §§ 901 et seq.] under this section – (1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof; (2) the term "employer" means an employer any of whose employees are employed in such operations; and (3) the term

> "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

[Emphasis added.]

1. Requirements For Coverage Under OCSLA

The coverage provisions of OCSLA are separate from and are not related to the coverage requirements of the Longshore and Harbor Workers' Compensation Act. *Robarge v. Kaiser Steel Corporation*, 17 BRBS 213 (1985), aff'd sub nom., *Kaiser Steel Corp. v. Director, OWCP*, 812 F.2d 518 (9th Cir. 1987). Although there appears to be consensus among the courts that OCSLA contains a "status" requirement for the purpose of determining jurisdiction thereunder, there are [23] conflicting precedents in the Third, Fifth and Ninth Circuits as to whether OCSLA also contains a "situs" requirement. The Supreme Court has addressed the issue of OCSLA' s geographical limitations, although not in the context of a claim for longshore benefits, finding that its provisions are limited to injuries actually occurring on the OCS. Finally, the Ninth Circuit, whose law is applicable here, has held that OCSLA does have a situs requirement.

a. Third Circuit Rejects Situs Requirement Under OCSLA

The Third Circuit has held that there is no situs requirement under OCSLA such that jurisdiction may be found even where the injury was not actually sustained on the OCS. *Curtis v. Schlumberger Offshore Service, Inc.*, 849 F.2d 805 (3rd Circuit 1988). In *Schlumbarger* [sic], petitioner was employed as a well-logging operator on *New Era,* an offshore drilling rig off the coast of New Jersey. As he was driving to Atlantic City to meet a helicopter which was to fly him to the *New Era.* While on the New Jersey Garden State Parkway, the company car was struck head-on by another vehicle and he suffered severe injuries. The administrative law judge found that Schlumbarger [sic] was covered under OCSLA awarded benefits. The Benefits Review Board reversed, holding that OCSLA did not apply because the injuries did not occur on the OCS. The Third Circuit reversed, holding that the test for OCSLA coverage was whether employee would have been injured "but for" his involvement in OCS operations.

It should be noted that no appellate courts outside the Third Circuit have followed *Schlumbarger* [sic] which rejected the requirement for situs as a prerequisite to coverage under OCSLA.

b. The Fifth Circuit Adopts Situs Requirement Under OCSLA

The Fifth Circuit issued a line of cases rejecting the Third Circuit's analysis and holding [24] that OCSLA applies only to injuries actually occurring on the OCS, and therefore, does have a situs requirement for purposes of establishing jurisdiction. See, *Mills v. Director, OWCP*, 877 F.2d 356, 361-362 (5th Cir. 1989); *Sisson v. Davis & Sons, Inc.*, 131 F.3d 555, 558 (5th Cir. 1998).

In *Mills v. Director, OWCP*, *supra.*, a welder was injured on shore while performing the construction of an oil drilling platform that was destined to be transported to the OCS. He contended that he was entitled to longshore benefits under the OCSLA extension to the Act. The Fifth Circuit reasoned that in enacting OCSLA, Congress intended to regulate only the OCS, and not those areas already governed by state law. The *Mills* court held, "We interpret § 1333(b) to require that covered operations be (1) related to OCS development; and (2) conducted on the OCS. Given the second requirement, activity conducted off the OCS, even though related to mineral extraction, does not satisfy § 1333(b)." *Id.*, at p. 359. Following *Mills,* the Fifth Circuit in *Sisson v. Davis & Sons, Inc.*, *supra.*, again concluded that the situs requirement under OCSLA was not met where petitioner was not injured on the OCS, but sustained his injuries in an on-shore parking lot. Similarly, in another case arising in the Fifth Circuit, the Benefits Review Board has followed the Fifth Circuit's reasoning in

Mills that OCSLA contains a situs requirement which petitioner did not meet, since his injuries did not occur on the OCS, but rather occurred on an Interstate freeway. *Martin v. Pride Offshore, Inc.*, 34 BRBS 192 (2001). The *Martin* case did not in any way limit its application to cases arising in the Fifth Circuit.

c. Supreme Court's Analysis Of OCSLA's Geographical Limitations

The Supreme Court has considered the issue of OCSLA's geographical limitations in [25] another context in *Offshore Logisitcs, Inc. v. Tallentire*, 477 U.S. 207 (1986).[3] In *Tallentire*, two widows brought death claims under the Death on the High Seas Act (DOHSA), OCSLA and Louisiana law after their husbands were killed in a helicopter crash in the high seas 35 miles off the coast of Louisiana as they were being transported from their workplace on an offshore drilling platform to the Louisiana shore. The Supreme Court held that because the fatalities did not arise from an accident on the OCS, but rather occurred on the high seas, jurisdiction under DOHSA, and not OCSLA controlled. *Id.*, at p. 220. "OCSLA . . . provides an essentially nonmaritime remedy and controls only on 'the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures'

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[3] *Tallentire* did not involve a claim against decedents' employer and thus did not directly address the issue of situs under OCSLA in the context of establishing jurisdiction under the Longshore Act.

erected thereon." *Id.*, at p. 217. Moreover, the *Tallentire* court held, "We do not interpret § 4 of OCSLA, 43 U. S. C. § 1333, to require or permit us to extend the coverage of the statute to the platform workers in this case who were killed miles away from the platform and on the high seas simply because they were platform workers. *Congress determined that the general scope of OCSLA's coverage, like the operation of DOHSA's remedies, would be determined principally by locale, not by the status of the individual injured or killed.*" *Id.*, at p. 219, emphasis added. In a footnote, the *Tallentire* Court notes:

> Only one provision of OCSLA ***superimposes a status requirement on the otherwise determinative OCSLA situs requirement***; § 1333(b) makes compensation for the death or injury of an "employee" resulting from certain operations on the Outer Continental Shelf payable under the Longshoremen's and Harbor Workers' Compensation Act. We note that because this case does not involve a suit by an injured employee against his employer pursuant to § 1333(b), this provision has no bearing on this case.

Id., at F.N. 2, emphasis added.

[26] **d. Ninth Circuit Follows *Tallentire* And Adopts Situs Requirement Under OCSLA**

There appears to be only one reported Ninth Circuit Case addressing the issue of whether OCSLA

contains a situs requirement for purposes of establishing jurisdiction. The Ninth Circuit found both the Fifth Circuit's reasoning and that of the Supreme Court persuasive and, citing to *Tallentire*, held that the situs requirement is a predicate for coverage under OCSLA. *A-Z International v. Phillips*, 179 F.3d 1187 (9th Cir. 1999), at F.N. 1. In the underlying case before the trial court in *Phillips*, the administrative law judge found that OCSLA has both a situs and a status requirement, and denied benefits to Phillips because he found that his injury did not occur on the OCS. *Phillips v. A-Z International*, 27 BRBS 119 (1993) (ALJ). In a supplemental decision, the administrative law judge found that Phillips had filed a fraudulent claim and recommended reimbursement to the employer of benefits paid. The administrative law judge certified facts to the District Court and the Benefits Review Board reversed and vacated the certification of facts. The Ninth Circuit reversed the BRB order holding that the certification of facts was valid and that the BRB lacked jurisdiction. *A-Z International v. Phillips*, *supra*. Citing to *Offshore Logistics, Inc. v. Tallentire*, *supra.*, the Ninth Circuit expressly held in a footnote to that decision, "The situs requirement is a predicate for coverage under OCSLA." *A-Z International v. Phillips*, *supra.*, at FN 1. The *Phillips* court commented that the Supreme Court in *Tallentire* had found that Congress had determined that the general scope of OCSLA " ... would be determined principally by locale." *Id.*, at F.N. 1.

It should be noted that the Ninth Circuit in *Kaiser Steel Corp. v. Robarge*, 812 F. 2d 518, 520,

indirectly addressed the situs issue. Although the *Robarge* court's holding dealt with status [27] under OCSLA, and not situs,[4] it noted, "The Lands Act also extends the scope of coverage provided by the Longshore Act to include certain employees injured in the course of their work *on the OCS*." (Emphasis added.)

Finally at least one other administrative law judge in the Ninth Circuit has found *Tallentire* persuasive and adopted the Fifth Circuit's analysis that situs is a prerequisite to jurisdiction under OCSLA. *Morrison v. Pool California Energy Services*, 36 BRBS 233 (2002) (ALJ).

2. Claimant Cannot Establish Jurisdiction Under OCSLA

Claimant brings the instant claim under 43 U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act. [UMF Nos. 6, 45]. Based upon clear Ninth Circuit precedent, in order to establish jurisdiction under the OCSLA extension to the Act, decedent's fatal injuries must have occurred *on the OCS*. The facts here are undisputed that the injury did not occur on the OCS, but rather at the shore-side La Conchita processing plant [UMF Nos. 1, 28, 29, 37, 38, 46]. He was not present on Platform Hogan, nor any other platform, on the date of his death [UMF Nos. 28, 39, 40-44]. Simply stated, because the decedent's fatal injuries

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[4] The facts in *Robarge* were undisputed that the injury occurred on the OCS.

did not occur on the OCS, claimant cannot establish jurisdiction under OCSLA, and accordingly, her claim must fail.

D. Summary Decision Is Proper Because There Is No Remaining Issue Of Material Fact

An Administrative Law Judge may grant a summary decision for either party if the pleadings, affidavits, materials obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to a judgment [28] as a matter of law. 29 C.F.R. §§ 18.40(d); Fed. R. Civ. P. 56. A motion for summary decision in a LHWCA case is governed by 29 C.F.R. §18.40, which provides:

> **§ 18.40 Motion for summary decision.**
>
> (a) Any party may, at least twenty (20) days before the date fixed for any hearing, move with or without supporting affidavits for a summary decision on all or any part of the proceeding. Any other party may, within ten (10) days after service of the motion, serve opposing affidavits or countermove for summary decision. The administrative law judge may set the matter for argument and/or call for submission of briefs.
>
> (b) Filing of any documents under paragraph (a) of this section shall be with the administrative law judge, and copies of such documents shall be served on all parties.

> (c) Any affidavits submitted with the motion shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.
>
> (d) The administrative law judge may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The administrative law judge may deny the motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

The purpose of summary decision is to promptly dispose of actions in which there is no genuine issue as to any material fact. *Hall v. Newport News Shipbuilding & Dry Dock Co.*, 24 BRBS 1 (1990).

The facts established herein irrefutably demonstrate that claimant cannot meet the "status" and "situs" requirements necessary to confer jurisdiction under §§ 902(3) and 903(a) of the Act, or under the OCSLA extension to the Act. Thus, claimant cannot

establish that decedent's fatal injuries are covered by the Act. Accordingly, there remains no triable issue of any material fact. Accordingly, summary decision must be granted.

[29] **E. Dismissal Of This Claim On Summary Decision Is Not Manifestly Unjust**

The facts presented by defendants clearly establish that claimant cannot establish the requisite jurisdiction upon which to base a claim for benefits either under the Longshore and Harbor Workers' Compensation Act, or under its OCSLA extension, and that dismissal by summary decision is proper. This will not leave claimant without a remedy. Dismissal of this claim by the Administrative Law Judge on summary decision will not affect claimant's entitlement to workers' compensation benefits under the California Labor Code. [UMF No. 48]. See, also, *Bobbitt v. WCAB*, (1983) 143 Cal.App. 3d 845, 848. Defendants presently are paying death benefits to claimant Luisa Valladolid under the California State Workers' Compensation Act. [UMF No. 49].

Furthermore, to the extent that summary decision in this matter is based in part upon deemed admissions,[5] this would not result in manifest injustice. The Court in *United States v. Kasuboski*, *supra.*, recognized

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[5] A review of the evidence in support of this motion will show that there is a proper factual basis for summary decision even in the absence of the deemed admissions.

that the entry of summary judgment predicated upon deemed admissions is a harsh result, but found that the harsh result was necessary to preserve the intent of the law:

> We recognize the potential harshness of this result. The failure to respond to admissions can effectively deprive a party of the opportunity to contest the merits of a case. This result, however, is necessary to insure the orderly disposition of cases; parties to a lawsuit must comply with the rules of procedure. *In addition, the harshness is tempered by the availability of the motion to withdraw admissions, a procedure which the defendants did not employ.*

Id., at p. 1350, emphasis added.

Furthermore, as noted above, "Unless the party securing an admission can depend on its [30] binding effect, he cannot safely avoid the expense of preparing to prove the very matters on which he has secured an admission, and the purpose of the rule is defeated." *Tillamook Country Smoker, Inc. v. Tillamook County Creamery Association, supra.*, at p. 984, citing to the Fed. R. Civ. P. 36 Advisory Committee Notes.

As in *Kasuboski*, claimant Valladolid failed to avail herself of the remedy of moving to set aside the deemed admissions,[6] despite having had nearly four

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[6] Defendants contend that even if claimant had brought such a motion prior to the instant motion for summary decision, she would not have been able to establish the elements necessary to set the admissions aside.

months to do so. Having not only failed to comply with the requests for admissions, but having also failed to comply with the requirement that requests to withdraw deemed admission must be made by a properly noticed motion, claimant cannot now say that the entry of summary decision is manifestly unjust.

IV. Conclusion

For the reasons set forth herein, defendants respectfully request that summary decision in this matter be granted and that claimant's claim be dismissed in accordance with the applicable law.

DATED: September 20, 2006

Respectfully submitted,

LAUGHLIN, FALBO, LEVY & MORESI LLP

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PACIFIC OPERATORS OFFSHORE, LLP
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STATE OF PENNSYLVANIA,
Adjusted by AIG CLAIM SERVICES, INC.

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

LUISA L. VALLADOLID, Claimant, v. PACIFIC OPERATORS OFFSHORE, LLP, Employer, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA adjusted by AIG CLAIM SERVICES, INC., Administrator.	OALJ Case No: 2005-LHC-00343 OWCP Case No: 18-83701 **STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY DECISION** 29 C.F.R. § 18.40; F.R.C.P. 56

For purposes of this motion only, defendants Pacific Operators Offshore, LLP and Insurance Company of the State of Pennsylvania, adjusted by AIG Claim Services, Inc., (hereinafter collectively

referred to as "Defendants") submit the following undisputed material facts in support of their Motion For Summary Decision.

ISSUE NO. 1: Claimant Luisa Valladolid Has Brought a Death Claim Against Defendants Arising Out Of the June 2, 2004 Death Of Her Husband, Juan J. Valladolid, During His Employment With Pacific Operators Offshore, LLP, Seeking Benefits Under the Outer Continental Shelf Lands Act Extension to the Longshore Act, and Under the California Workers' Compensation Act.

FACTS	SUPPORT
1. On June 2, 2004, decedent Juan J. Valladolid was employed as a Roustabout by Pacific Operators Offshore, LLP. On that date he sustained fatal injuries as a result of being crushed by a forklift. The accident investigation revealed that he apparently was using the forklift to assist him in picking plantains at the time of the accident. The accident resulting in decedent's death occurred	1. Declaration of Gordon "Scoop" Boswell, ¶¶ 5, 6, 8; Declaration of Clement M. Alberts, ¶¶ 4, 7-11, and Exhibits 1-3.

adjacent to a service road within the employer's crude oil flocculation plant facility located at 7459 Pacific Coast Highway, Ventura, CA.	
2. Defendants submitted their LS-202 dated June 4, 2004.	1. Declaration of Michael W. Thomas, ¶ 3 and Exhibit 1 thereto.
3. Defendants submitted their LS-207 dated June 14, 2004 controverting claimant's claim.	3. Declaration of Michael W. Thomas, ¶ 4 and Exhibit 2 thereto.
4. A claim for California state workers' compensation benefits dated June 3, 2004 was submitted by the employer on behalf of claimant Luisa Valladolid, decedent's wife. Death benefits presently are being provided to claimant by defendants under the California Labor Code.	4. Declaration of Michael W. Thomas, ¶¶ 5, 20 and Exhibits 3 and 11 thereto.
5. Claimant Luisa Valladolid, decedent's wife, submitted her LS-262 dated July 22, 2004.	5. Declaration of Michael W. Thomas, ¶ 6 and Exhibit 4 thereto.
6. On or about February 7, 2006, claimant's counsel Diane Middleton informed defendants' counsel that she would be	6. Declaration of Michael W. Thomas, ¶¶ 8, 10 and Exhibit 5.

bringing the instant claim under the Outer Continental Shelf Lands Act extension to the Longshore Act. Luisa Valladolid is not claiming injury under § 901 et. seq. of the LHWCA except as it may have occurred under 43 U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act.

ISSUE NO. 2: Claimant Failed to Timely Respond to Defendants' Request for Admissions, and Therefore, All Matters Set Forth in the Request for Admissions Are Deemed Admitted by Operation of Law.

FACTS	SUPPORT
7. Claimant initially was represented in connection with the instant matter by Diane Middleton.	7. Declaration of Michael W. Thomas, ¶ 7.
8. This matter initially was set for trial on the May 16, 2005 calendar call.	8. Declaration of Michael W. Thomas, ¶ 9.
9. On February 25, 2005, defendants served requests for admissions on claimant's attorney Diane Middleton. The	9. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto.

requests were served by mail. The responses to the requests for admissions were due April 1, 2005.	
10. Claimant's attorney Diane Middleton, requested an extension of time to respond to the request for admissions and defendants granted said request to permit claimant to submit her responses to request for admissions on or before April 8, 2005.	10. Declaration of Michael W. Thomas, ¶ 11 and Exhibit 6 thereto.
11. Claimant's attorney Diane Middleton requested a second extension of time to respond to the request for admissions and defendants granted said request to permit claimant to submit her responses to request for admissions on or before May 7, 2005.	11. Declaration of Michael W. Thomas, ¶ 12 and Exhibit 7 thereto.
12. On or about September 14, 2005, claimant substituted Charles Naylor as her counsel, replacing Diane Middleton.	12. Declaration of Michael W. Thomas, ¶ 13 and Exhibit 8 thereto.
13. Defendants' counsel received a copy of a letter from Diane Middleton to	13. Declaration of Michael W. Thomas, ¶ 14 and Exhibits 9-10 thereto.

Charles Naylor dated September 16, 2005 indicating that she had forwarded Charles Naylor defendants' discovery requests, together with additional file materials. Mr. Naylor wrote a letter to Judge Mapes dated September 14, 2005 acknowledging that the responses to defendants' discovery requests were past due, but did not request additional time to respond.

14. No response to defendants' request for admissions has been received by defendants' counsel.	14. Declaration of Michael W. Thomas, ¶ 15.
15. No motion to set aside the deemed admissions has ever been submitted by claimant's counsel.	15. Declaration of Michael W. Thomas, ¶ 16.
16. Request For Admission No. 1 asked claimant to admit that Juan Valladolid has no other dependents under the Longshore and Harbor Workers' Compensation Act other than Luisa L. Valladolid.	16. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto.

17. Request For Admission No. 2 asked claimant to admit that Juan Valladolid was never present on Platform Hogan on the date of death.	17. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto.
18. Request For Admission No. 3 asked claimant to admit that Juan Valladolid did not do any work on any barges, floating platforms, floating islands, ships, or other type of vessel located on the outer continental shelf on the date of death.	18. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto.
19. Request For Admission No. 4 asked claimant to admit that Juan Valladolid was never present on any barges, floating platforms, floating islands, ships, or other type of vessel located on the outer continental shelf on the date of death.	19. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto.
20. Request For Admission No. 5 asked claimant to admit that Juan Valladolid was not en route to a barge, floating	20. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto.

platform, floating island, ship, or other vessel located on the outer continental shelf when he was killed.	
21. Request For Admission No. 6 asked claimant to admit that Juan Valladolid was not scheduled to be on Platform Hogan or any other Outer Continental Shelf Lands Act covered site on the date of death.	21. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto.
22. Request For Admission No. 7 asked claimant to admit that Luisa Valladolid is not claiming injury under § 901 et. seq. of the LHWCA except as it may have occurred under 43 U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act.	22. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto.
23. Request For Admission No. 8 asked claimant to admit that all of Juan Valladolid's job duties on the date of death were performed on the employer's La Conchita land site.	23. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto.
24. Trial in this matter was continued from the	25. Declaration of Michael W. Thomas, ¶ 17.

May 16, 2005 calendar call to the October 17, 2005 calendar call; and again to the April 24, 2006 calendar call; and again to the August 28, 2006 calendar call. At claimant's request, the August 28, 2006 trial date was vacated and the case has been assigned to the December 11, 2006 calendar call.

ISSUE NO. 3: Claimant Cannot Meet The Requirements For Jurisdiction Under The Longshore and Harbor Workers' Compensation Act

FACTS	SUPPORT
25. Pacific Operators Offshore, LLP is a company whose primary business operations include oil exploration and extraction. The business operations at its plant facility located at 7459 Pacific Coast Highway, Ventura, CA consisted of the intake of crude oil from offshore platforms via pipeline, the separation of water from the crude oil, the purification of the separated	25. Declaration of Clement M. Alberts, ¶ 1; Declaration of Gordon "Scoop" Boswell, ¶ 3.

water, and the temporary storage of crude oil in tanks. Oil, natural gas and produced water were received from offshore platforms Hogan and Houchin.

26. On June 2, 2004, decedent Juan J. Valladolid was employed by Pacific Operators Offshore, LLP as a "Roustabout" and was assigned to employer's flocculation plant facility located at 7459 Pacific Coast Highway, Ventura, CA. This location is known as employer's "La Conchita" plant.

25. Declaration of Gordon "Scoop" Boswell, ¶¶ 5-6; Declaration of Clement M. Alberts, ¶¶ 4-6.

27. Decedent's usual job duties with the employer primarily involved performing maintenance and repair duties at Platform Hogan. Platform Hogan is located on the Outer Continental Shelf more than three miles off the coast of California and is affixed to the ocean floor. Decedent would access Platform Hogan by boarding a crew boat at Casitas

27. Declaration of Gordon "Scoop" Boswell, ¶¶ 5-6; Declaration of Clement M. Alberts, ¶¶ 4-6.

Pass Pier. Casitas Pass Pier is located approximately three miles from the La Conchita plant facility. Decedent's regular duties on Platform Hogan included picking up trash and emptying trash barrels and office wastebaskets, washing the decks and well bay, assisting in repairing wellhead safety equipment, piping projects, painting, and assisting on the pipe deck with crane loads going on or off the platform. His usual duties also included working at the La Conchita plant, where he would perform various maintenance and clean-up duties such as painting, sandblasting, pulling weeds, cleaning drain culverts, using a forklift to unload trucks and using a forklift to transport equipment and debris throughout the plant.

28. Decedent was scheduled and assigned to work at the La Conchita plant during the period including May 5, 2004 and June

28. Declaration of Gordon "Scoop" Boswell, ¶¶ 6, 8.

5, 2004 to assist in an ongoing project there involving the retrofitting of a water processing tank. His duties during this period of time primarily included assisting the welders, painting, moving scaffolding and moving debris. During the time period between May 5, 2004 and the date of his death, decedent worked only at the La Conchita plant and did not work on Platform Hogan or on any other offshore platform. Specifically, on June 2, 2004, decedent was assigned to work at the employer's La Conchita plant, and was not present on Platform Hogan or any other offshore platform.	
29. At approximately 4:00 p.m. on the date of the accident, decedent was directed by Gordon "Scoop" Boswell to go to the rear yard of the plant with a forklift and to clean up some debris. At approximately 5:15 p.m. on the same date,	29. Declaration of Gordon "Scoop" Boswell, ¶ 8; Declaration of Clement M. Alberts, ¶ 7-11 and Exhibits 1-3; Declaration of Michael W. Thomas, ¶ 21 and Exhibit 12.

claimant was found next to a plantain tree approximately ten feet off of one of the plant facility service roads. He was lying on his back with a forklift resting on his abdominal and chest area. He was pronounced dead at the scene.

30. Evidence at the scene of the accident indicated that decedent had pulled the forklift off of the service road, that he had been standing on the elevated tines of the forklift in order to cut a stalk of plantains from a plantain tree, and that he had somehow fallen in front of the forklift and was run over by it. The harvesting of plantains along the service roads in the La Conchita plant were not related to decedent's employment duties with Employer.

30. Declaration of Clement M. Alberts, ¶¶ 7-11, and Exhibits 1-3; Declaration of Gordon "Scoop" Boswell, ¶¶ 8-9.

31. The location of the accident was approximately ten feet off of the service road connecting the La Conchita plant

31. Declaration of Clement M. Alberts, ¶¶ 7-11 and Exhibits 1-3; Declaration of Gordon "Scoop" Boswell, ¶ 8.

main facility area to the rear yard of the plant.

32. The La Conchita plant, and the accident scene specifically, were separated from the Pacific Ocean by railroad tracks, a highway and a beach. There are no businesses engaged in shipping operations or other maritime activities within at least a one-mile radius of the La Conchita plant. The nearest business is a combination gas station/convenience store which is located approximately one-half mile from the La Conchita plant.	32. Declaration of Clement M. Alberts, ¶¶ 12, 14, 18 and Exhibit 4; Declaration of Gordon "Scoop" Boswell, ¶ 10.
33. The La Conchita plant, and the accident scene specifically, are not over or contiguous with any body of water and does not possess any area to unload materials from a dock, barge, floating platform, floating island, ship or other type of vessel. The La Conchita plant is separated from the Pacific Ocean by	33. Declaration of Clement M. Alberts, ¶¶ 12-14 and Exhibit 4; Declaration of Gordon "Scoop" Boswell, ¶ 10.

railway tracks, a highway and a beach.

34. The La Conchita plant does not possess any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or any other area used at any time for the loading, unloading, repairing, dismantling, or building of any vessel. The nearest sea-port is Port Hueneme, located approximately 16 miles from the La Conchita plant.	34. Declaration of Clement M. Alberts, ¶ 13; Declaration of Gordon "Scoop" Boswell, ¶ 10.
35. The operations at the La Conchita plant, during the tenure of decedent's employment there, never involved any operations involving the loading or unloading of anything to or from any marine vessel, and never involved the repair of any marine vessel. The crude oil was received into the plant via pipeline from an offshore platform and was processed and stored in temporary storage tanks before being transported away from the plant by pipeline.	35. Declaration of Clement M. Alberts, ¶ 15

36. Decedent's job duties with the employer never involved loading, unloading, repairing or building a vessel.	36. Declaration of Gordon "Scoop" Boswell, ¶ 7.

ISSUE NO. 4: Claimant Cannot Meet The Requirements For Jurisdiction Under The Outer Continental Shelf Lands Act extension of the Longshore and Harbor Workers' Compensation Act

FACT	SUPPORT
37. The accident resulting in decedent's death did not occur on or over the Outer Continental Shelf.	36. Declaration of Clement M. Alberts, ¶ 16.
38. The accident resulting in decedent's death did not occur in the course of traveling to or from the Outer Continental Shelf or anything on or over the Outer Continental Shelf.	38. Declaration of Clement M. Alberts, ¶ 17.
39. Decedent was scheduled and assigned to work at the La Conchita plant during the period including May 5, 2004 and June 5, 2004 to assist in an ongoing project there involving the retrofitting of a water processing	39. Declaration of Clement M. Alberts, ¶¶ 1, 7-11, 14, and Exhibits 1-4.; Declaration of Gordon "Scoop" Boswell, ¶¶ 3, 6, 8, 10.

tank. His duties during this period of time primarily included assisting the welders, painting, moving scaffolding and moving debris. During the time period between May 5, 2004 and the date of his death, decedent worked only at the La Conchita plant and did not work on Platform Hogan or on any other offshore platform. Specifically, on June 2, 2004, decedent was assigned to work at the employer's La Conchita plant, and was not present on Platform Hogan or any other offshore platform. The location of the accident was approximately ten feet off of the service road connecting the La Conchita plant main facility area to the rear yard of the plant. The La Conchita plant is a land-based facility used to process crude oil and is separated from the Pacific Ocean by railway tracks, a highway and a beach.

40. Juan Valladolid was never present on

40. Declaration of Michael W. Thomas, ¶ 10

Platform Hogan on the date of death.	and Exhibit 5 thereto; UMF No. 17; Declaration of Gordon "Scoop" Boswell, ¶6.
41. Juan Valladolid did not do any work on any barges, floating platforms, floating islands, ships, or other type of vessel located on the outer continental shelf on the date of death.	41. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto; UMF No. 18.
42. Juan Valladolid was never present on any barges, floating platforms, floating islands, ships, or other type of vessel located on the outer continental shelf on the date of death.	42. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto; UMF No. 19.
43. Juan Valladolid was not en route to a barge, floating platform, floating island, ship, or other vessel located on the outer continental shelf when he was killed.	43. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto; UMF No. 20.
44. Juan Valladolid was not scheduled to be on Platform Hogan or any other Outer Continental Shelf Lands Act covered site on the date of death.	44. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto; UMF No. 21.

45. Luisa Valladolid is not claiming injury under § 901 et. seq. of the LHWCA except as it may have occurred under 43 U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act.	45. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto; UMF No. 22.
46. All of Juan Valladolid's job duties on the date of death were performed on the employer's La Conchita land site.	46. Declaration of Michael W. Thomas, ¶ 10 and Exhibit 5 thereto; UMF No. 23.

ISSUE NO. 5: Summary Decision Predicated Upon Deemed Admissions Is Not Manifestly Unjust Under The Facts Of This Case

FACT	SUPPORT
47. Claimant failed to avail herself of the remedy of moving to set aside the deemed admissions despite having nearly one year to do so.	47. Declaration of Michael W. Thomas, ¶ 18.
48. Dismissal of this claim by the Administrative Law Judge on summary decision will not affect claimant's entitlement to workers' compensation benefits under the California Labor Code.	48. Declaration of Michael W. Thomas, ¶ 19

49. Defendants presently are paying death benefits to claimant Luisa Valladolid under the California State Workers' Compensation Act.	49. Declaration of Michael W. Thomas, ¶ 20 and Exhibit 11.

DATED: September 21, 2006

Respectfully submitted,

LAUGHLIN, FALBO, LEVY & MORESI LLP

By: /s/ [Illegible]
Michael W. Thomas
Shana L. Prechtl
Attorneys for Defendants
PACIFIC OPERATORS OFFSHORE, LLP and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Adjusted by AIG CLAIM SERVICES, INC.

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UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

LUISA L. VALLADOLID, Claimant, v. PACIFIC OPERATORS OFFSHORE, LLP, Employer, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA adjusted by AIG CLAIM SERVICES, INC., Administrator.	OALJ Case No: 2005-LHC-00343 OWCP Case No: 18-83701 **DECLARATION OF MICHAEL W. THOMAS IN SUPPORT OF MOTION FOR SUMMARY DECISION** 29 C.F.R. § 18.40; F.R.C.P. 56

I, Michael W. Thomas, declare:

1. I am an attorney licensed to practice before all the courts of the State of California and am a

member of the firm Laughlin, Falbo, Levy & Moresi, LLP, counsel for defendants Pacific Operators Offshore, LLP (Employer) and Insurance Company of the State of Pennsylvania, adjusted by AIG Claim Services, Inc. (Carrier) herein.

2. The facts contained in this declaration are stated of my own knowledge, and if called upon to testify under oath to said facts, I could and would so testify.

3. A true and correct copy of employer's form LS-202 dated June 4, 2004 is attached hereto as Exhibit 1.

4. A true and correct copy of defendants' form LS-207 dated June 14, 2004 is attached hereto as Exhibit 2.

5. A true and correct copy of a claim for California State workers' compensation benefits dated June 3, 2004 and submitted by defendants on behalf of claimant Luisa Valladolid is attached hereto as Exhibit 3.

6. A true and correct copy of claimant's form LS-262 dated July 22, 2004 is attached hereto as Exhibit 4.

7. Claimant initially was represented in this matter by attorney Diane Middleton.

8. On or about February 7, 2006, claimant's counsel Diane Middleton informed me that she would be bringing the instant claim under the Outer Continental Shelf Land Act extension to the Longshore Act.

9. This matter initially was set for trial on the May 16, 2006 Calendar Call.

10. On February 25, 2005, I caused to be served on claimant's counsel, Diane Middleton, a set of Requests For Admissions. The responses to the requests were due April 1, 2005. A true and correct copy of defendants' Requests For Admissions to claimant is attached hereto as Exhibit 5.

11. Claimant's attorney Diane Middleton, requested an extension of time to respond to the request for admissions and defendants granted said request to permit claimant to submit her responses to request for admissions on or before April 8, 2005. A true and correct copy of Ms. Middleton's March 31, 2005 letter requesting an extension of time is attached hereto as Exhibit 6.

12. Claimant's attorney Diane Middleton requested a second extension of time to respond to the request for admissions and defendants granted said request to permit claimant to submit her responses to request for admissions on or before May 7, 2005. A true and correct copy of Ms. Middleton's April 27, 2005 letter requesting an extension of time is attached hereto as Exhibit 7.

13. On or about September 14, 2005, claimant substituted Charles Naylor as her counsel, replacing Diane Middleton. A true and correct copy of the Substitution of Attorneys dated September 14, 2005 is attached hereto as Exhibit 8.

14. Defendants' counsel received a copy of a letter from Diane Middleton to Charles Naylor dated September 16, 2005 indicating that she had forwarded Charles Naylor defendants' discovery requests, together with additional file materials. A true and correct copy of the letter dated September 16, 2005 is attached hereto as Exhibit 9. Additionally, Mr. Naylor wrote a letter to Judge Mapes dated September 14, 2005 acknowledging that the responses to defendants' discovery requests were past due, but did not request additional time to respond. A true and correct copy of Mr. Naylor's September 14, 2005 letter is attached hereto as Exhibit 10.

15. No response to defendants' request for admissions has been received by defendants' counsel.

16. No motion to set aside the deemed admissions has ever been submitted by claimant's counsel.

17. Trial in this matter was continued from the May 16, 2005 calendar call to the October 17, 2005 calendar call; and again to the April 24, 2006 calendar call; and again to the August 28, 2006 calendar call. At claimant's request, the August 28, 2006 trial date was vacated and the case has been assigned to the December 11, 2006 calendar call.

18. Claimant failed to avail herself of the remedy of moving to set aside the deemed admissions despite having nearly one year to do so.

19. Dismissal of this claim by the Administrative Law Judge on summary decision will not affect

claimant's entitlement to workers' compensation benefits under the California Labor Code.

20. Defendants presently are paying death benefits to claimant Luisa Valladolid under the California State Workers' Compensation Act. Attached hereto as Exhibit 11 is an August 9, 2006 letter to claimant from AIG Claim Services detailing the benefits paid and to be paid.

21. Attached hereto as Exhibit 12 is a true and correct copy of the death certificate relating to Juan Valladolid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of September, 2006, at San Francisco, CA

/s/ [Illegible]
MICHAEL W. THOMAS

TIMOTHY K. SPRINKLES, State Bar No. 62877
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LUISA L. VALLADOLID

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

LUISA L. VALLADOLID, Claimant, vs. PACIFIC OPERATIONS OFFSHORE, LLP, Employer; and, INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Carrier; and, AIG CLAIM SERVICES, INC., Third Party Administrator, Respondents.	OALJ NO. 2005-LHC-00343 OWCP NO. 18-083701 NOTICE OF MOTION AND MOTION TO WITHDRAW OR AMEND DEEMED ADMISSIONS; POINTS AND AUTHORITIES; AND DECLARATION OF TIMOTHY K. SPRINKLES [29 C.F.R. 18.20(e), F.R.C.P. 36(a)

TO THIS HONORABLE COURT AND TO PACIFIC OPERATIONS OFFSHORE, LLP, INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA and AIG CLAIM SERVICES, INC. AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE THAT Claimant LUISA L. VALLADOLID (hereinafter "Claimant") will and hereby does move the Court for an order to withdraw or amend Claimant's deemed admissions in response to Defendant's Request for Admissions to Claimant served and received on February 28, 2005.

In the request for admissions served on Claimant, a true copy of which is attached to the Declaration of Timothy K. Sprinkles as Exhibit 1, and incorporated herein, Defendants PACIFIC OPERATIONS OFFSHORE, LLP, INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA and AIG CLAIM SERVICES, INC. AND ITS ATTORNEY OF RECORD (hereinafter "Defendants") requested that Claimant admit the truth of the following facts under Rule 36 of the Federal Rules of civil Procedure:

1. Juan Valladolid has no other dependent under the Longshore and Harbor Workers' Compensation Act other than Luisa L. Valladolid.

2. Juan Valladolid was never present on Platform Hogan on the date of death.

3. Juan Valladolid did not do any work on any barges, floating platforms, floating islands, ships, or other type of vessel ocated [sic] on the outer continental shelf on the date of death.

4. Juan Valladolid was never present, any barges, floating platforms, floating islands, ships, or other type of vessel locaated [sic] on the outer continental shelf on the date of death.

5. Juan Valladolid was not en route to a barge, floating platform, floating island, ship, or other vessel located on the outer continental shelf when he was killed.

6. Juan Valladolid was not scheduled to be on Platform Hogan or any other Outer Continental Shelf Lands Act covered site on the date of death.

7. Luisa Valladolid is not claiming injury under § 901 et. Seq. Of the LHWCA except as it may have occurred under 43 U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act.

8. All of Juan Valladolid's job duties on the date of death were performed on the employer's La Conchita land site.

Claimant failed to serve on Defendants, within thirty (30) days after service, a written statement denying specifically the relevant matters of which an admission was requested. Therefore, each matter of which an admission was requested is deemed admitted under 29 C.F.R. 18.20(b), F.R.C.P. 36(a) unless the administrative law judge allows a longer time to respond.

Leave of court is required before deemed admissions may be amended or withdrawn. [FRCP 36(b)] A formal motion to amend or withdraw is mandatory. *Kalis v. Colgate-Palmolive Co.* (7th Cir. 2000 2231 F3d 1049, 1059)

WHEREFORE, Claimant moves the Court to allow Claimant to withdraw or amend Claimant's

deemed admissions and respond to the requests as follows:

1. Admit in part, Deny in part.
2. Deny.
3. Deny.
4. Deny.
5. Deny.
6. Deny.
7. Admit in part, Deny in part.
8. Deny.

A true copy of Claimant's proposed Responses to Defendants' Request for Admissions to Claimant is attached to the Declaration of Timothy K. Sprinkles as Exhibit 2, and incorporated herein.

This motion will be based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, the Declaration of Timothy K. Sprinkles and all other pleadings and papers contained in the record.

October 9, 2006

LAW OFFICES OF
CHARLES D. NAYLOR

by: /s/ Timothy K. Sprinkles
Timothy K. Sprinkles
Attorneys for Claimant

MEMORANDUM OF POINTS AND AUTHORITIES

A. The Admissions Affect The Merits Of This Action.

Pursuant to Federal Rule of Civil Procedure §36(b), the Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved and withdrawal or amendment will not prejudice that party in maintaining the action or defense on the merits. See *Sonaoda v. Cabrera* (2001) 255 F.3 d 1035; *Warren v. International Brotherhood of Teamsters, etc.* (1976) 544 F.2d 334. [Where determination of the merits of a party's claims would be eliminated by automatic admissions, and the opposing party has failed to demonstrate prejudice from withdrawal, granting a motion to withdraw admissions is not an abuse of discretion by the Court.]

Here, Defendants' request for admissions go directly to the merits of the case. Defendants' request involves a factual dispute related to the core jurisdictional issue of the case: whether LUISA L. VALLADOLID's claim for death benefits comes within the provisions of §901 et. Seq. of the Longshore and Harbor Workers' Compensation Act (hereinafter "LHWCA") or 43 U.S.C. §1333(b) of the Outer Continental Shelf Lands Act (hereinafter "OCSLA").

Denying Claimant's withdrawal or amendment of admissions would be manifestly unjust and would effectively remove from dispute all triable issues of

material facts related to jurisdiction, which Defendants have known to be disputed at every stage of the legal process.

B. Defendants Will Not Be Prejudiced by Withdrawal and Amendment As They Have Known Or Should Have Known The Underlying Facts Related To Jurisdiction From The Date Of Juan Valladolid's Death.

Any assertion on the part of Defendants that they will be substantially prejudiced should the Court grant relief to Claimant to withdraw and to amend the deemed responses to the request for admissions would be disingenuous.

All of the factual issues in dispute relate to whether LUISA L. VALLADOLID's claim for death benefits comes within the provisions of the LHWCA or the OCSLA. These disputed factual issues have always been known, or should have been known, to Defendants. Further, Defendants have always had complete and unfettered access to all discoverable evidence in this case. All of the deposed witnesses are or were Defendants' employees prior to, on the date of, and subsequent to the date of Juan Valladolid's death. Defendants created and continue to maintain all records, if any existed, related to Juan Vallalodid's employment, including employment dates, weekly time slips, job duties, locations worked, and names and contact information of supervisors and coworkers.

Substantial prejudice is not shown simply because an admitted fact would have to be proved. Rather, some increased difficulty in proving the previously admitted fact (e.g., unavailability of witnesses, etc.) must be shown. [FRCP 36(b)].

Trial has not yet begun, this case is set for Trial Calendar Call on December 11, 2006. Discovery is still open and continuing. On September 15th and 19th, 2006, Claimant deposed Chris Magill and Gordon "Scoop" Boswell, two of Juan Valladolid's supervisors, and Jose Rosales, one of his co-workers. True copies of the Notices of Depositions for Gordon "Scoop" Boswell, Chris Magill and Jose Rosales are attached to the Declaration of Timothy K. Sprinkles as Exhibit 3, and incorporated herein. Deposition transcripts from these three depositions have not been served on Claimant. Ample time prior to trial still exists for Defendants to conduct further discovery into any issues raised by Claimant's proposed amended responses to their request for admissions.

At the conclusion of the above described depositions, Mr. Michael Thomas, counsel for Defendants and Mr. Timothy Sprinkles, counsel for Claimant, engaged in a discussion related to Claimant's proposal that the parties agree to submit the issue of jurisdiction to the Court along with a joint stipulation as to the facts of the case. Defendants were well aware that Claimant's position was that her claim for death benefits comes within the provisions of the LHWCA or the OCSLA. Mr. Thomas knew, or should have known, that based on the deposition testimony

of the above named witnesses, Claimant would not admit the truth of the requested admissions. Mr. Thomas knew, or should have known, that barring a joint stipulation of facts to be submitted to the court, Claimant would have to make an untimely response to the request for admissions.

In *Hanlin Group, Inc. v. Village of Solvay, New York* [606 (N.D.N.Y. 1990), 18 Fed.R. Serv.3d] the propounding party knew that the responding party intended to make an untimely response to a request for admissions. Because the propounding party knew the responses were forthcoming, coupled with only a brief delay, an argument of "prejudice" did not prevail. Where a party replies late to a request to admit, and the late reply has not prejudiced the other party, the court should allow the untimely reply. *Id.* at 3. Accordingly, the *Hanlin* Court granted permission for response to be made late.

C. The Deemed Admissions Are Directly Related To Disputed Factual Issues That Should Be Decided On The Merits.

Prior to filing and serving their Motion for Summary Decision, Defendants knew, or should have known, that Claimant's response to their request for admission would have been to not admit the truth of the facts contained in the requests.

The deposition testimony of the three above named witnesses provides evidence that (i) Juan Valladolid worked approximately 98% of the time on

Platforms Hogan and Houchin, two oil platforms located on the Outer Continental Shelf, while employed by Defendant; (ii) on any given workday, Juan Valladolid had one, two or more "supervisors" who assigned him duties on and off the oil platforms; (iii) Juan Valladolid spent some nights on Platforms Hogan and Houchin; (iv) Juan Valladolid traveled on a regular basis between the oil platforms and the harbor at Carpenteria, California on the Defendant's boat; (v) Juan Valladolid' s job duties included loading and unloading cargo, materials, and equipment on and off Defendant's boat; (vi) the travel time between Defendant's La Conchita plant and the oil platforms, via the harbor at Carpenteria, was approximately thirty minutes; (vii) prior to and after Juan Valladolid reported to work at Defendant's La Conchita plant at approximately 7:00 a.m. on the day of his death, his specific whereabouts are unknown to Defendant, unaccounted for by his "supervisors", and/or in dispute until approximately 4:00 p.m.; and (viii) Defendant did not maintain any records indicating the duties or locations of Juan Valladolid's work on the day of his death.

Where a delay has not prejudiced the propounding party, admission of an untimely reply should not be automatic. *Moosman v. Glitz*, 358 F.2d 686 (2 Cir. 1966). Further, the purpose of Rule 36 is to expedite the trial by removing uncontested issues. *Id.* In *Moosman*, the propounding party moved for summary judgment after the responding party failed to respond timely to requests for admission. In the instant case,

Defendants have done the same thing. Here, as in *Moosman*, there are disputed factual issues which should be decided on the merits.

Allowing automatic admission of all 8 requests for admissions would not serve the purposes of justice, and instead, would be manifestly unjust. Because the admissions go to the merits of the case, these automatic admissions would unfairly deprive Claimant of a trial on the merits. This is not the intent of FRCP 36.

D. Without The Automatically Deemed Admissions, Defendants Would Not Be Able To Prevail On Their Motion For Summary Decision As There Are Clearly Material Facts In Dispute.

The timing of Defendants' motion for summary decision is most suspect. At the time of filing their motion, Defendants knew that three depositions had been taken and discovery remains open. Evidence is still being discovered that will impact the court's factual findings related to jurisdiction.

At the end of each of the three depositions, Defendants knew, or should have known that they intended to expeditiously file a motion for summary decision. Yet, Defendants failed to expedite the transcription of the deposition transcripts. It appears obvious that Defendants are trying to ram though a motion for summary decision before contrary evidence becomes published and available in reportable form.

Defendants' motion for summary decision is supported by deemed admissions rather than evidence garnered from sworn deposition testimony.

E. Defendants motion for summary decision is deficient because it fails to comply with 29 C.F.R. §18.6(a) and (b).

> Any application for an order or any other request shall be made by motion. . . . all parties shall be given reasonable opportunity to state an objection to the motion or request. . . . 29 C.F.R. § 18.6(a).
>
> Within ten (10) days after a motion is served, or within such other period as the administrative law judge may fix, any party to the proceeding may file an answer in support or in opposition to the motion. . . . 29 C.F.R. § 18.6(b).

Defendants' attempt to ram through a motion for summary decision before the deposition transcripts become available deprives Claimant of a reasonable opportunity to provide the court a meaningful answer in opposition to the motion along with objections annotated with the soon to be available evidence contained in those deposition transcripts.

F. Defendants motion for summary decision is deficient because it fails to comply with 29 C.F.R. §18.7(a) and (b)(2) and(7).

> At any time prior to the commencement of the hearing, the administrative law judge may order any party to file a prehearing statement of position. 29 C.F.R. §18.7(a)
>
> A prehearing statement shall . . . briefly set forth . . . a statement that the . . . parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible. . . . (and shall set forth the) (s)uggested time and location of (the) hearing. . . . 29 C.F.R. § 18.7(b)(2) and (7).

In their haste, Defendants have not sought a prehearing order thereby depriving the Court of its right to fix the period for Claimant's answer in opposition. Most importantly Defendants failed to meet and confer prior to filing and serving their motion and have failed to include a declaration of counsel that he has conferred or corresponded with opposing counsel in a good faith effort to resolve the dispute presented in the motion. Defendants had a golden opportunity to meet and confer regarding Claimant's failure to respond to their request for admissions and the disputed factual issues central to the issue of jurisdiction. Defendants discussed Claimant's proposal to enter into a joint stipulation of facts but failed to inform Claimant's counsel of the impending motion thereby causing Claimant to *not* request expedited deposition

transcripts. Defendants failed to meet and confer regarding the outstanding request for admissions and the issues contained in their motion for summary decision. .Finally, Defendants have failed to include notice of the time and location for the motion to be heard.

The discretion to permit a late response to requests for admissions should be exercised to relieve a party from default by the use of the admissions to obtain a summary judgment. *In re: Heritage Bond Litig.* (C.D. Cal. 2004) 220 F.R.D. 624, 626. Here, the request for admissions propounded by Defendants was not intended merely to narrow the issues at trial. Rather, the 8 requests were meant to establish that there exists no jurisdiction for this claim for death benefits. Properly used, FRCP 36 should narrow the issues at trial. Rather, this section should not be the propounding party's chance to short cut to summary decision.

CONCLUSION

Compelling circumstances exist for the Court to order withdrawal or amendment of the deemed responses to Defendants' request for admissions. Defendants have known and acknowledged that this is a claim for death benefits under the provisions of the LHWCA and/or the OCSLA. A true copy of Employer's First Report of Injury, Form LS-202, is attached to the Declaration of Timothy K. Sprinkles as Exhibit 4, and incorporated herein. Claimant's proposed amended

responses are clearly contrary to the deemed admissions. Defendants have known, or should have known, the factual issues that are the subject matter of their request for admissions are and always have been in dispute. Defendants have always had complete and unfettered access to all discoverable evidence in this case because all of the witnesses are Defendants' employees and Defendants maintain all employment records. Defendants can not show that withdrawal of the deemed admissions will result in substantial prejudice. Where a party replies late to a request to admit, and the late reply has not prejudiced the other party, the court should allow the untimely reply. For the reasons cited above, Claimant requests this Court order Claimant be allowed to withdraw the deemed admissions and respond to Defendants' Request for Admissions to Claimant in accordance with the proposed Responses to Defendant's Request for Admissions as attached hereto as Exhibit 2.

October 9, 2006

LAW OFFICES OF
CHARLES D. NAYLOR

by: /s/ Timothy K. Sprinkles
Timothy K. Sprinkles,
Attorneys for Claimant

DECLARATION OF TIMOTHY K. SPRINKLES IN SUPPORT OF MOTION TO WITHDRAW OR AMEND DEEMED ADMISSIONS

I, Timothy K. Sprinkles, declare as follows:

1. I am an attorney licensed to practice law before all the courts of the State of California and am a member of the law firm of The Law Offices of Charles D. Naylor, counsel for Claimant LUISA L. VALLADOLID (hereinafter "Claimant").

2. The facts contained in this declaration are stated of my own knowledge, and if called upon to testify under oath to said facts, I could and would so testify.

3. This case is set for Trial Calendar Call on December 11, 2006 and discovery is still open.

4. A true copy of Defendants' Request for Admissions to Claimant served and received by Claimant's counsel on February 28, 2005 is attached hereto as Exhibit 1.

5. A true copy of Claimants' proposed Responses to Defendants' Request for Admissions to Claimant is attached hereto as Exhibit 2.

6. True copies of the Notices of Taking Deposition for Gordon "Scoop" Boswell, Chris Magill and Jose Rosales are attached hereto as Exhibit 3.

7. A true copy of Defendant employer PACIFIC OPERATIONS OFFSHORE, LLP's form LS-202, dated June 4, 2004 is attached hereto as Exhibit 4.

8. On September 15th and 19th, 2006, Claimant deposed Gordon "Scoop" Boswell, and Chris Magill, two of Juan Valladolid's supervisors, and Jose Rosales, one of his co-workers. Deposition transcripts from these three depositions have not been served on Claimant.

9. The deposition testimony of Magill, Boswell, and Rosales provides evidence that (i) Juan Valladolid worked approximately 98% of the time on Platforms Hogan and Houchin, two oil platforms located on the Outer Continental Shelf, while employed by Defendant; (ii) on any given workday, Juan Valladolid had one, two or more "supervisors" who assigned him duties on and off the oil platforms; (iii) Juan Valladolid spent some nights on Platforms Hogan and Houchin; (iv) Juan Valladolid traveled on a regular basis between the oil platforms and the harbor at Carpenteria, California on the Defendant's boat; (v) Juan Valladolid's job duties included loading and unloading cargo, materials, and equipment on and off Defendant's boat; (vi) the travel time between Defendant's La Conchita plant and the oil platforms, via the harbor at Carpenteria, was approximately thirty minutes; (vii) prior to and after Juan Valladolid reported to work at Defendant's La Conchita plant at approximately 7:00 a.m. on the day of his death, his specific whereabouts are unknown to Defendant, unaccounted for by his "supervisors", and/or in dispute

until approximately 4:00 p.m.; and (viii) Defendant did not maintain any records indicating the duties or locations of Juan Valladolid's work on the day of his death.

10. Defendants failed to expedite the transcription of the deposition transcripts.

11. All of the deposed witnesses are or were Defendants' employees prior to, on the date of, and subsequent to the date of Juan Valladolid's death.

12. Defendants created and continue to maintain all records, if any existed, related to Juan Vallalodid's employment, including employment dates, weekly time slips, job duties, locations worked, and names and contact information of supervisors and co-workers.

13. At the conclusion of the Jose Rosales deposition, Mr. Michael Thomas, counsel for Defendants and Mr. Timothy Sprinkles, counsel for Claimant, engaged in a discussion related to Claimant's proposal that the parties agree to submit the issue of jurisdiction to the Court along with a joint stipulation as to the facts of the case.

14. Prior to filing and serving their motion for Summary Decision, Defendants failed to meet and confer with Claimant's counsel regarding Claimant's failure to respond to Defendants' request for admissions and the disputed factual issues central to the issue of jurisdiction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of October, 2006, at San Pedro, California.

/s/ Timothy K. Sprinkles
TIMOTHY K. SPRINKLES

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Attorneys for Defendants
PACIFIC OPERATORS OFFSHORE, LLP
and INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,
Adjusted by AIG CLAIM SERVICES, INC.

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

JUAN J. VALLADOLID (dec'd), Claimant, v. PACIFIC OPERATORS OFFSHORE, LLP, Employer, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA adjusted by AIG CLAIM SERVICES, INC., Administrator.	OALJ Case No: 2005-LHC-00343 OWCP Case No: 18-83701 **DEFENDANTS' MOTION TO STRIKE CLAIMANT'S REPLY TO DEFENDANTS' OPPOSITION TO MOTION TO WITHDRAW OR AMEND DEEMED ADMISSIONS AND DECLARATION OF TIMOTHY K. SPRINKLES IN SUPPORT THEREOF**

Defendants PACIFIC OPERATORS OFFSHORE, LLP (Hereinafter "Employer") and INSURANCE

COMPANY OF THE STATE OF PENNSYLVANIA, Adjusted by AIG CLAIM SERVICES, INC., collectively referred to herein as defendants, hereby submit this Motion to Strike Claimant's Reply to Defendants' Opposition to Motion to Withdraw or Amend Deemed Admissions and Declaration of Timothy K. Sprinkles in Support Thereof. The basis for the motion is threefold: 1) claimant was not granted leave to submit a reply brief to the opposition; 2) even if leave had been granted to submit the reply brief, it is untimely; and 3) the reply brief raises new legal arguments and evidence not raised in the Motion to Withdraw Or Amend Deemed Admissions, and does not limit itself to those issues raised in defendants' opposition to the motion. Defendants request that the Reply and supporting declaration be stricken and that the facts and arguments asserted therein not be considered by the Court in reaching its findings relating to the Motion To Withdraw or Amend Deemed Admissions.

I. The Reply Brief Is Not Permitted Pursuant to 29 C.F.R. §18.6(b)

29 C.F.R. §18.6(b) provides:

> *Answers to motions.* Within ten (10) days after a motion is served, or within such other period as the administrative law judge may fix, any party to the proceeding may file an answer in support or in opposition to the motion, accompanied by such affidavits or other evidence as he or she desires to rely upon. ***Unless the administrative law judge***

provides otherwise, no reply to an answer, response to a reply, or any further responsive document shall be filed.

Here, claimant did not request leave to file a reply brief and none was granted.

II. The Reply Brief Is Untimely

Even if the Court in its discretion were to permit claimant to file a reply brief related to her Motion To Withdraw Or Amend Deemed Admissions, the brief submitted by claimant is untimely. Defendants' opposition to claimant's motion was filed and served on October 20, 2006. Claimant's reply brief was served November 30, 2006, *41 days after service of the opposition.* Under any standard of reasonableness, this cannot be considered timely.

III. The Reply Brief Impermissibly Raises New Factual And Legal Issues To Which Defendants Have Not Been Given The Opportunity To Reply.

Astoundingly, claimant for the first time on reply argues that her responses to defendants' requests for admissions are *timely,* that claimant "never refused to respond," and that she was granted an "extension" to respond to the requests for admissions by virtue of her multiple requests to continue the trial. She makes the further astounding argument, not raised in the original motion, that she was "compelled to prematurely respond" to the requests for admissions,

which were served on her counsel *on February 5, 2005.* She further submits a *second and separate* proposed "amended" response to the requests for admissions and *asks for relief that is different than requested in the original motion.* For instance, in the original motion, claimant asks the Court to grant her leave to respond to Request No. 5 by Stating, "Deny." Yet in the proposed responses submitted with the original motion, Request No. 5 was stated as "unable to admit or deny." In the *second* proposed "amended" response, submitted with the reply brief, Request No. 5 is stated as, "Admit." The only response contained in the *second* proposed "amended" response that is the same as those contained in the first proposed response is Request No. 1.

In addition, claimant submits new evidence via declaration of her counsel and by argument in the brief that is not submitted in rebuttal to defendants' opposition to the motion, but is instead submitted in support of these newly raised arguments. Claimant argues in the reply that she could not "meaningfully respond" to the requests for admissions until after she had received decedent's time sheets, and until after her counsel had deposed defendants' witnesses. This is a circular argument, which begs the questions of why claimant's counsel did not conduct such discovery during the *591 day period* between the service of the requests for admissions and the filing of the motion to withdraw the deemed admissions, and why no extension of time to respond to the requests was obtained. Furthermore, although defendants will not

here argue the merit of claimant's contention that the evidence cited in the reply brief assists her case, other than to say that a careful review of such evidence by the Court will dispose of claimant's assertion, suffice it to say that this evidence and argument raised for the first time on reply is improper and deprives defendant of its due process right to respond.

It is improper to introduce new facts or different legal arguments in a reply brief than those presented in the moving papers. *Lujan v. National Wildlife Federation*, (1990) 497 U.S. 871, 894-895. Moreover, if the Court relies upon new material contained in a reply brief, it must afford the opposing party the opportunity to respond. *Beaird v. Seagate Tech. Inc.*, 145 F.3d 1159, 1164-1165 (10th Cir. 1998); *In Re: Pacific Gas & Electric Co.*, 2002 U.S. Dist. Lexis 27549, at p. 15 (N.D. CA 2002).

III. Conclusion

The reply brief, served without leave of court 41 days after defendants' opposition was filed, must be stricken. It is not only procedurally improper, but improperly and impermissibly raises new legal arguments and submits new evidence not submitted in the original motion to which defendants were provided the opportunity to respond. Claimant's blatant disregard for the procedural rules and requirements before this Court should not be tolerated. It should be noted by the Court that she also has filed an impermissible "Supplemental Opposition" to defendants' motion for

summary decision. Defendants urge the Court to put a stop to this gamesmanship and to strike the reply brief and supporting declaration for the reasons set forth herein.

DATED: December 5, 2006

Respectfully submitted,

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PETITIONER'S BRIEF

RECORD AND BRIEFS

Supreme Court, U.S.
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No. 10-507

In The
Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,

Petitioners,

v.

LUISA L. VALLADOLID, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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QUESTION PRESENTED

The Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1356 (OCSLA), governs those who work on oil drilling platforms and other fixed structures beyond state maritime boundaries. Workers are eligible for compensation for "any injury occurring as the result of operations conducted on the outer Continental Shelf." 43 U.S.C. § 1333(b) (2006). When an outer continental shelf worker is injured *on land*, is he (or his heir):

1. *always* eligible for compensation, because his employer's operations on the shelf are the but for cause of his injury (as the Third Circuit holds); or

2. *never* eligible for compensation, because the Act applies only to injuries occurring on the shelf (as the Fifth Circuit holds);

3. *sometimes* eligible for compensation, because eligibility for benefits depends on the nature and extent of the factual relationship between the injury and the operations on the shelf (as the Ninth Circuit holds)?

RULES 24.1(b) AND 29.6 STATEMENT

All parties are listed in the caption.

Petitioner Pacific Operators Offshore, LLP, is a limited liability corporation wholly-owned by AnAmerica Corporation, a successor to AnAmerica & Drilling Company. Petitioner the Insurance Company of the State of Pennsylvania (ICSOP) is a direct, wholly-owned subsidiary of Chartis U.S., Inc. Chartis U.S., Inc., is a wholly-owned subsidiary of Chartis, Inc. Chartis, Inc., is a wholly-owned subsidiary of American International Group, Inc., which is a publicly held corporation. With the exception of the AIG Credit Facility Trust (a trust established for the sole benefit of the United States Treasury), no parent corporation or publicly held corporation owns 10 percent or more of the stock of American International Group, Inc.

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The decision of the Administrative Law Judge in the Department of Labor's Office of Workers' Compensation Programs is reported at 41 Ben. Rev. Bd. Serv. (MB) 795 (ALJ) and is printed in the petition appendix (Pet. App.) at 53a. The decision of the Benefits Review Board is reported at 42 Ben. Rev. Bd. Serv. (MB) 67 and is reprinted at Pet. App. 35a. The opinion of the Court of Appeals is reported at 604 F.3d 1126 and is reprinted at Pet. App. 1a. The unpublished order of the Court of Appeals denying rehearing en banc is reprinted at Pet. App. 94a.

JURISDICTION

The Benefits Review Board had jurisdiction under 33 U.S.C. § 921(b)(3). The Ninth Circuit had jurisdiction to review the decision of the Benefits Review Board under 33 U.S.C. § 921(c). The Ninth Circuit entered judgment on May 13, 2010, Pet. App. 1a, and denied petitioners' timely petition for rehearing en banc on July 19, 2010. Pet. App. 94a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant portions of 33 U.S.C. § 903 and 43 U.S.C. §§ 1301, 1312, 1331, 1332, and 1333 are reproduced at Pet. App. 96a-106a.

STATEMENT

1. The Outer Continental Shelf Lands Act (OCSLA), Pub. L. No. 83-212, 67 Stat. 562 (1953) (codified at 43 U.S.C. §§ 1331-1356), extends the jurisdiction of the United States to the seabed, subsoil, and fixed structures of the outer continental shelf (OCS), an area that lies more than three miles offshore and beyond the territorial jurisdiction of the States. 43 U.S.C. §§ 1301(a)(2), 1312, 1331(a). The Act governs the rights and obligations of those who own, operate, and work on offshore drilling platforms.

A separate federal law, the Longshore and Harbor Workers' Compensation Act (LHWCA), provides workers' compensation benefits to designated maritime employees, 33 U.S.C. § 903(a) (2006), and OCSLA extends LHWCA benefits to outer continental shelf workers in certain circumstances:

> With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural

> resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshore and Harbor Workers' Compensation Act.

43 U.S.C. § 1333(b).

2. Respondent Luisa Valladolid, the widow of decedent Juan Valladolid, brought this proceeding against Pacific Operators and ICSOP for workers' compensation benefits under LHWCA and OCSLA. Joint Appendix (J.A.) 5. Pacific's primary business involves oil exploration and extraction. J.A. 8. The decedent worked for Pacific as a roustabout, stationed primarily on Pacific's drilling platforms located on the outer continental shelf off California. J.A. 9, 25-26. He spent approximately 98 percent of his working time on drilling platforms, primarily performing maintenance and repair duties. J.A. 26, 51. He spent limited time working at Pacific's onshore oil and gas facility on dry land in Ventura, California. J.A. 51. The facility is separated from the Pacific Ocean by railroad tracks, a highway, and a beach. J.A. 11, 28. The facility received crude oil from the offshore platforms by pipeline. J.A. 8. Pacific processed the crude oil, separating its oil, gas, water, and solid constituents, then routed the oil and gas through pipelines to third parties. J.A. 8, 12, 25. The decedent performed maintenance duties at the facility, including painting, sandblasting, weed-pulling, cleaning drain-culverts, and operating a forklift. J.A. 9, 26.

The decedent and other Pacific employees traveled to the offshore platforms on a crew boat departing from a pier located approximately three miles from the oil and gas facility. J.A. 26, 43. The crew boat also ferried equipment and supplies, and removed scrap metal from the platforms. At the pier, workers loaded scrap metal into trucks and drove it to the facility, where the metal was dumped at various spots on the property. J.A. 56. The decedent's duties at the onshore facility included using a forklift to retrieve the scattered scrap metal and transport it to a central location so that third-party vendors could pick up the metal and haul it away. J.A. 77, 79-80. He performed this process roughly once every two years. J.A. 80.

Between May 5 and June 5, 2004, Pacific assigned the decedent to assist in painting a water tank at the onshore facility. J.A. 26. On June 2, 2004, at 4:00 p.m., the decedent's supervisor directed him to take a forklift to the rear yard of the facility and move scrap metal. J.A. 10, 27, 38, 53-54. One hour and 15 minutes later, the supervisor found the decedent next to a tree roughly 10 feet from a service road in the facility, with the forklift resting on his abdomen and chest. He was pronounced dead at the scene. J.A. 10, 27, 52.

According to the accident report, the decedent stood atop one of the raised tines of the forklift to cut fruit from a tree. The forklift apparently moved forward while the decedent was picking the fruit, which caused him to lose his balance and fall in front

of the forklift, which then rolled over him. J.A. 10-11, 13-15, 18-19. The decedent had not moved any of the scrap metal he had been directed to move. J.A. 52.

3. As the accident occurred on dry land in California, respondent received death benefits under California's workers' compensation scheme. Pet. App. 54a n.2. She also filed a claim for benefits under OCSLA and LHWCA. An administrative law judge in the Department of Labor's Office of Workers' Compensation Programs denied respondent's claim under OCSLA on the ground the death had not occurred on the outer continental shelf. Pet. App. 93a. The administrative law judge also denied the direct LHWCA claim. Pet. App. 81a. The Benefits Review Board upheld the administrative law judge's decision. Pet. App. 42a-43a, 51a-52a.

4. Respondent petitioned for review in the United States Court of Appeals for the Ninth Circuit. The court agreed with the Board that respondent had no direct right to LHWCA benefits. *Valladolid v. Pac. Operations Offshore, LLP*, 604 F.3d 1126, 1141 (9th Cir. 2010), Pet. App. 32a.

On the claim under OCSLA, however, the court rejected the Board's position that eligibility for benefits is determined by a situs of injury test. *Valladolid*, 604 F.3d at 1137-38, Pet. App. 23a-24a. According to the Ninth Circuit, while "the *operations* must be conducted on the outer continental shelf . . . the only limitation on the *injury* is that it be 'the result of' operations on the outer continental shelf. . . . [T]he phrase 'as the result of' simply denotes causation . . . . Thus, the most natural reading of § 1333(b) provides

coverage for any injury *caused by* outer continental shelf operations regardless of where the injury occurred." *Id.* at 1134, Pet. App. 15a.

The Ninth Circuit held: "An injury is 'the result of' outer continental shelf operations if there is a substantial nexus between the injury and the operations." *Valladolid*, 604 F.3d at 1142, Pet. App. 34a. "To meet the standard, the claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations." *Id.* at 1139, Pet. App. 28a. Rather than deciding whether the facts of this case (which are undisputed) satisfied its "substantial nexus" test, the Ninth Circuit remanded for further agency proceedings involving the new test. *Id.* at 1142, Pet. App. 34a.

5. The Ninth Circuit's test conflicts with the tests formulated by both the Third Circuit and the Fifth Circuit for determining eligibility for LHWCA benefits under OCSLA. It is also in tension with language from decisions of this Court, which the Ninth Circuit dismissed as "unconsidered" dictum "not entitled to any special deference." *Valladolid*, 604 F.3d at 1132, Pet. App. 10a.

In *Curtis v. Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 809 (3d Cir. 1988), the Third Circuit held that an oil rig worker injured in a car accident on a New Jersey freeway while traveling to a helicopter that would have taken him to an offshore rig was entitled to LHWCA benefits. As interpreted by the Third Circuit, "[t]he only criterion [under OCSLA] . . . for securing LHWCA benefits is for injured employees to be involved in 'any operations conducted on the

outer Continental Shelf for the purpose of exploring for, [and] developing . . . the natural resources . . . of the outer Continental Shelf.' There [is] . . . no limitation . . . to 'artificial islands and fixed structures'. . . ."; *id.* at 810 n.9 ("[s]itus does not control the application of the LHWCA"). Thus, the Third Circuit has adopted a "but for" test: the employee's injury on the freeway occurred as a result of operations on the outer continental shelf because "'[b]ut for' his traveling to the [offshore rig] for the purpose of conducting 'operations' within § 1333(b), [he] would not have sustained injuries in the automobile accident." *Id.* at 811.

The Fifth Circuit took a different approach in *Mills v. Dir., Office of Workers' Comp. Programs, U.S. Dep't of Labor*, 877 F.2d 356 (5th Cir. 1989). Holding that a welder injured during the onshore construction of a platform designed for the outer continental shelf was not eligible for LHWCA benefits, it explained: "Mills and the Director read 'operations' broadly to encompass work by employees – wherever located – provided their work furthers OCS mineral extraction activity in some significant way. But under an equally plausible reading of § 1333(b), coverage requires that the relevant 'operations' out of which the injury arises occur on the OCS." *Id.* at 359. Consequently it held that "§ 1333(b) . . . require[s] that covered operations be (1) related to OCS development; and (2) conducted on the OCS. Given the second requirement, activity conducted off the OCS, even though related to OCS mineral extraction, does not satisfy § 1333(b)." *Id.*

The Ninth Circuit disagreed with both the Third and Fifth Circuits. Rejecting the Fifth Circuit's holding in *Mills*, it held that "a situs-of-injury test is unambiguously absent from § 1333(b)." *Valladolid*, 604 F.3d at 1135, Pet. App. 19a. However, refusing to follow the Third Circuit, the Ninth Circuit did not "find that Congress intended to enact a simple 'but for' test in covering injuries that occur 'as the result of' outer continental shelf operations. Injuries with a tenuous connection to the outer continental shelf are not covered." *Id.* at 1139, Pet. App. 27a.

The Ninth Circuit also rejected petitioners' reliance on this Court's decision in *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986). There, the Court had to determine whether OCSLA or a separate federal statute dealing with a unique jurisdictional area, the Death on the High Seas Act, 46 U.S.C. §§ 30301-30308 (DOHSA), applied to offshore rig workers injured 35 miles off the coast while being transported back from work on an oil rig. The Court held that DOHSA, not OCSLA, governed the injuries. Because *Offshore Logistics* did not involve a claim against the workers' employer, subsection 1333(b) was not directly implicated. Nonetheless, the Court relied on OCSLA's general focus on the situs of the injury, not the status of the worker, and the Court specifically noted that subsection 1333(b) "superimposes a status requirement" – that of being an employee suffering injury from certain operations – "on the otherwise determinative OCSLA situs requirement." 477 U.S. 220 n.2.

The Ninth Circuit acknowledged that *Offshore Logistics* supported the position adopted by the Benefits Review Board and the Fifth Circuit and urged by petitioners but nonetheless dismissed it as dictum of "the unconsidered variety unworthy of any special deference." *Valladolid*, 604 F.3d at 1132, Pet. App. 10a.

This Court granted a petition for writ of certiorari to resolve this conflict among the Courts of Appeals regarding eligibility for OCSLA workers compensation benefits.

SUMMARY OF ARGUMENT

1. 43 U.S.C. § 1333(b) provides workers' compensation benefits for disability or death "resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving the rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf. . . ." This statute plainly means that workers are eligible for benefits only when they are injured *on* the shelf. As a matter of common sense, an injury is not "the result of operations conducted on the outer Continental Shelf" unless it was caused by something that happened on the shelf (as opposed to something that happened on land). This is clear from the textual focus on "operations conducted on the outer Continental Shelf." Injuries resulting from operations on dry land are self-evidently not covered.

The Ninth Circuit gave the statute broader scope based on the phrase "as the result of operations conducted," since the statute unambiguously would impose a situs of injury test without that phrase. But that misreads both the import of that phrase and the broader statutory text and context. Omission of that phrase might have unduly narrowed the statute by raising questions about its application to latent injuries that clearly result from offshore operations but do not manifest themselves until later. Equally important, omission of that phrase might have unduly expanded the statute by allowing recovery under OCSLA for employee injuries having nothing to do with offshore operations for the purposes covered by the statute. In short, there are ample explanations for the inclusion of that phrase that do not lead to the counterintuitive conclusion that OCSLA covers injuries suffered on dry land. Moreover, the statutory text, structure and context all reinforce the conclusion that subsection 1333(b), like the rest of OCSLA, is focused on the unique problems of the outer continental shelf and covers only injuries sustained there.

2. This common sense reading of the statute matches Congress' purpose in enacting OCSLA, which was to provide a "body of law applicable to the seabed, the subsoil, and the fixed structures . . . on the outer Continental Shelf," an area that previously lacked an established legal system because it lies beyond state boundaries. By fashioning a uniform *federal* workers' compensation scheme for workers injured on the outer continental shelf, Congress saved

employers and employees from the uncertain application, and procedural vagaries, of adjacent *states'* workers' compensation acts. The federal regime protected against some workers having no remedy, while others might be covered by overlapping jurisdictional claims from more than one state. There is no indication that, or logical reason why, Congress desired to extend LHWCA benefits to workers injured on land, where there was not the same kind of jurisdictional confusion and workers with a connection to offshore operations would have a clear entitlement to the same state-law benefits as other land-based workers who were exposed to the identical workplace hazards. Moreover, in light of Congress' clear intent to deal with the special jurisdictional challenges of the outer continental shelf, there is no reason to lightly extend OCSLA's protections to injuries suffered on dry land. This Court has repeatedly refused to casually extend a statute focused on domestic concerns extraterritorially. It makes no more sense to read OCSLA as governing not just the special circumstances of the outer continental shelf, but Ventura, California and the turnpikes of New Jersey as well.

3. The structure and context of § 1333(b) also support a construction that limits its applications to injuries suffered on the outer continental shelf. None of § 1333's other subsections applies beyond the outer continental shelf. To the contrary, those provisions demonstrate that Congress intended to regulate solely the outer continental shelf, not areas already governed by state law or other jurisdictional provisions, like DOHSA. There is no legislative history

suggesting that Congress intended to single out the OCSLA workers' compensation scheme for different treatment. Indeed, § 1333(f) refers generally to "[t]he specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a). . . ." Section 1333(b) is not carved out from this provision. Rather, it is clear from the statute as a whole that the focus of OCSLA in its entirety, including § 1333(b), is only to extend certain federal laws to the outer continental shelf, not create additional remedies to augment clearly applicable state law remedies on land.

4. This Court has made clear in prior decisions that the general scope of OCSLA's coverage is determined principally by locale, not by the status of an individual. It covers workers injured offshore, not offshore workers. In *Offshore Logistics*, 477 U.S. 207, the Court explained that OCSLA is focused on the unique problems of the outer continental shelf and thus generally addresses the situs of injury, not the status of workers. Recognizing that OCSLA focused on the unique problems of the outer continental shelf, and that Congress had addressed the unique problems of the high seas in DOHSA, the Court found OCSLA not to extend beyond the outer continental shelf. *Id.* at 218-19. In so holding, the Court noted that § 1333(b) "superimposes" – that is, adds to, rather than replaces – the "otherwise determinative OCSLA situs requirement" by making "compensation for the death or injury of an 'employee' resulting from certain operations on the outer Continental Shelf

payable under the Longshoreman's and Harbor Workers' Compensation Act." *Id.* at 220 n.2. That was not some "unconsidered" dictum. Both that observation and the Court's general approach to OCSLA in *Offshore Logistics* point the way to reversal.

5. Limiting eligibility for LHWCA benefits to workers who are injured on the outer continental shelf is sound policy as well. Such a bright-line rule reduces the need for litigation by ensuring predictable results before the Benefits Review Board. In contrast, the Ninth Circuit's "substantial nexus" test and the Third Circuit's "but for" test are so imprecise that they invite litigation and inevitably will cause inconsistent eligibility determinations in cases with similar facts. This predictable, bright-line rule also vitiates adverse insurance consequences that would stem from a vague rule that might extend eligibility for LHWCA benefits to workers who never step on the outer continental shelf. To hedge against that possibility, employers would be forced to obtain insurance coverage for their *land-based* workers under both the applicable state scheme and OCSLA.

6. The test proposed by the Director, Office of Workers' Compensation programs, departs from the sensible course charted by the Benefits Review Board and suffers from many of the same flaws as the Ninth and Third Circuits' tests. According to the Director, outer continental shelf workers retain eligibility for LHWCA benefits when they perform outer continental shelf-related work on land. But this effort to make recovery turn on the status of the worker without regard to situs of injury cannot be reconciled with the

OCSLA's text or this Court's precedents. Under this test, an outer continental shelf worker injured on land will receive more generous benefits than a land-based worker, who is limited to recovery under a state workers' compensation scheme, even though both workers face identical workplace hazards. Further, the Director's test suffers from the same lack of simplicity and predictability as the Ninth Circuit's "substantial nexus" test and the Third Circuit's "but for" test.

ARGUMENT

AN OUTER CONTINENTAL SHELF WORKER INJURED ON LAND IS NOT ELIGIBLE FOR LHWCA BENEFITS.

A. The text, structure, and purpose of 43 U.S.C. § 1333(b) establish that eligibility for LHWCA benefits depends on a simple and administrable factor: the location where a worker is injured. Workers injured on the shelf are eligible for benefits; workers injured on land are not.

1. The text of § 1333(b) limits LHWCA benefits to disability or death "resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving the rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf. . . ." That

language unambiguously imposes a situs requirement. The question becomes whether the statute confers LHWCA benefits to anyone who can trace his injury to offshore operations or whether it instead applies only to those who suffer their injury in offshore areas raising the unique jurisdictional problems OCSLA addresses. The text, structure and purpose of § 1333(b), not to mention this Court's precedents, all point to the latter, more limited role for § 1333(b).

According to the Ninth Circuit, while § 1333(b)'s text makes clear that "the *operations* must be conducted on the outer continental shelf . . . the only limitation on the *injury* is that it be the result of operations on the outer continental shelf." *Valladolid*, 604 F.3d at 1134, Pet. App. 15a. But the Ninth Circuit's effort to decouple the "injury" and the "operations" ignores the text and context of § 1333(b), not to mention common sense. An injury is not "the result of operations conducted on the outer Continental Shelf" unless it was caused by something that *happened* on the shelf. Thus, the injury must occur on the shelf to come within the statutory text. An injury occurring on land is not embraced within the statute.

The Ninth Circuit seems to have decoupled injury and operations by placing undue weight on the phrase "as a result of operations conducted." In the absence of that phrase, the statute would allow for recovery for "any injury occurring on the outer Continental Shelf," and might have greater superficial similarity to other OCSLA provisions, such as § 1333(c), which extends the National Labor Relations Act (NLRA)

to any "unfair labor practice . . . occurring upon" the outer continental shelf. But omitting that phrase would not have worked. It would have rendered the statute both underinclusive and overinclusive.

Congress likely used the phrase "injury occurring as a result of operations conducted on the outer Continental Shelf," rather than "injury occurring upon" the shelf, to make clear that workers would be able to obtain recovery for latent injuries. For example, an outer continental shelf worker might be injured by exposure to harmful substances on the shelf but the injury might not manifest until later, when the worker is on land. Congress' word choice forecloses employers from arguing, based on cases decided before it enacted OCSLA, that an injury that did not manifest until later was not compensable because it did not occur on the shelf. *See Reiser v. Metropolitan Life Ins. Co.*, 262 A.D. 171, 28 N.Y.S.2d 283 (1941) (disease does not occur within meaning of disability insurance policy until it reveals itself), and *Cohen v. North American Life & Casualty Co.*, 150 Minn. 507, 185 N.W. 939 (1921) (disease began when it manifested itself, even though the medical cause of the disease existed prior to inception of health policy).

On the other hand, omitting the phrase "as a result of operations conducted" might have provided greater coverage than Congress intended by giving an employee a LHWCA cause of action against his employer for injuries occurring offshore but with no nexus to operations conducted for the purposes specified in the statute. Congress' intent, after all,

was to provide a LHWCA cause of action for workers who suffered injuries in the course of performing operations for the purposes of developing, removing and transporting the natural resources of the outer continental shelf. Congress did not intend to make employers absolutely responsible for any injury suffered by an employee offshore. Someone suffering a heart attack while sleeping or injured while engaged in operations for a different purpose was not intended to recover under LHWCA. They might or might not have had an action under the law extended to the offshore facility by § 1333(a), but the more limited recovery under LHWCA pursuant to § 1333(b) would not be available.

Thus, the Court should not assume – as the Ninth Circuit did – that by including the phrase "as the result of operations conducted" Congress desired to confer benefits on workers injured on land. That phrase does ample work without giving it a meaning that would extend § 1333(b) well beyond the reach of the outer continental shelf and its unique jurisdictional problems.

2. The statute's very specific and unique purpose confirms that Congress did not intend to cover outer continental shelf workers injured on land and that the Ninth Circuit's statutory construction was misguided. OCSLA addressed a very specific problem: that the outer continental shelf was something of a jurisdictional no-man's land which sometimes left injured parties without a remedy and other times involved competing and overlapping jurisdictional

claims. Before the enactment of OCSLA in 1953, the outer continental shelf was "an area of intense activity that lacked an established legal system because it lies beyond state boundaries." *Mills*, 877 F.2d at 358. *See also Outer Continental Shelf: Hearings on S. 1901 Before the Comm. on Interior and Insular Affairs*, 83d Cong. 406 (1953) [hereinafter *Hearings*] (statement of Sen. Anderson: "I think what Senator Cordon [the bill's author] has tried to do is recognize there is now an area out there in which there is a void and no administration, and the Government has to come to administer that area . . . "). Consequently, "to define a body of law applicable to the seabed, the subsoil, and the fixed structures . . . on the outer Continental Shelf," *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 355 (1969), Congress extended "[t]he Constitution and laws and civil and political jurisdiction of the United States" to those locales "to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a state. . . ." 43 U.S.C. § 1333(a)(1) (2006). In the event no federal law existed on a particular issue, Congress borrowed the adjacent state's law as surrogate federal law. 43 U.S.C. § 1333(a)(2)(A) (2006). Congress not only extended federal law to these structures generally in § 1333(a), but also extended specific federal protections in § 1333's other subsections.

"One obvious void in the law governing the OCS was the lack of a workers' compensation scheme for thousands of workers employed in the dangerous oilfield extraction industry. Congress filled that void

in § 1333(b) when it adopted the LHWCA's benefits provision to cover non-seamen employed in the oil patch on the OCS." *Mills*, 877 F.2d at 358. The exclusion of seamen who already enjoyed Jones Act coverage underscores that Congress was not interested in supplying duplicative remedies, but rather wanted to address a jurisdictional void. No such void existed when outer continental shelf workers were injured *on land*. Like the decedent in this case, those workers were covered by applicable state workers' compensation schemes.

The Ninth Circuit nonetheless believed there was no void because, when OCSLA was enacted, some state workers' compensation schemes applied extraterritorially and would have covered some workers injured on the shelf. *Valladolid*, 604 F.3d at 1136, Pet. App. 20a-21a (citing Louisiana, Texas, and California cases). The three cases cited by the Ninth Circuit address when a state workers' compensation scheme applies to an injury suffered in another *state*. But an injury occurring on the outer continental shelf would not have been considered an injury occurring in another *state* – since the United States had not recognized state boundaries as extending to the limits of the outer continental shelf. Thus, in drafting OCSLA, Congress could not anticipate whether all shelf workers would be covered by state workers' compensation schemes. Moreover, the three states whose cases were cited by the Ninth Circuit do not embrace the entirety of our Nation's outer continental shelf, and Congress would not have wanted the

availability of workers' compensation benefits to depend on which state was closest. To remove all doubt on this point, Congress created *federal* workers' compensation benefits, under § 1333(b).

The Ninth Circuit also found it significant that a provision allowing LHWCA benefits only "if recovery for such disability or death through worker's compensation proceedings is not provided by State Law" was deleted from an early version of OCSLA. *Valladolid*, 604 F.3d at 1136, Pet. App. 19a-20a, citing S. Rep. No. 83-411, at 16 (1933). According to the Ninth Circuit, "[t]he deletion of this overlap provision gives a clear indication that Congress intended to provide [OCSLA] coverage regardless of the applicability of state law, seriously undercutting the conception of § 1333(b) as a gap-filler." *Id.*

But the Ninth Circuit failed to appreciate that Congress' purpose in providing outer continental shelf workers with a uniform compensation scheme was not dependent on the applicability and vagaries of the adjacent state's workers' compensation scheme. Congress was concerned not just with jurisdictional gaps and voids, but with jurisdictional overlaps and confusion as well. *See Hearings*, *supra*, at 422 (statement of Frank J. Zito, Att'y: "The question arises as to what State. . . . [T]here may be as many [state] compensation laws applicable as there are owners of structures"). A system where one worker might be left without a remedy while another would arguably be entitled to benefits from more than one state had little to recommend it. Similar competing jurisdictional

provisions – sometimes overlapping, sometimes leaving a void – caused Congress to enact DOHSA. *See Offshore Logistics*, 477 U.S. at 214.

Finally, Congress may have deleted the overlap provision because it would be capricious to extend the more generous benefits available under LHWCA[1] only to workers injured on a platform adjacent to a state that provided *no* workers' compensation coverage for injuries on the outer continental shelf. *Hearings*, *supra*, at 418 (statement of Sen. Anderson explaining that LHWCA benefits – which OCSLA made available – are "liberal" and "much better than Texas and Louisiana have"); *id.* at 512 (similar). *See also Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 723 (1980) (explaining that Congress amended § 1(a) of LHWCA, 33 U.S.C. § 903(a), to expressly cover marine workers injured on piers and other areas adjoining navigable waters in order to eliminate "the disparities . . . [that] lay primarily in the paucity of relief under *state* compensation laws"). The deletion does not support the inference that Congress intended that outer continental shelf workers injured on land and covered by state workers' compensation should receive greater benefits than their land-based co-workers. To the

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[1] In 2004, the death benefit payable to a single dependent like respondent under the California Workers' Compensation Act was $125,000. Cal. Labor Code, § 4702(3). Under OCSLA (through LHWCA), a surviving spouse is generally entitled to 50 percent of the decedent's average weekly wage until the spouse's death or remarriage. 33 U.S.C. § 909(b). The decedent's weekly wage was $928.22. Pet. App. n.54.

contrary, there is no conceivable reason why Congress would have intended that workers facing identical workplace hazards should receive different benefits based on the fortuity of where they did the majority of their work.

The unique problem that Congress was attempting resolve in OCSLA provides a key insight into the proper reading of § 1333(b)'s "as the result of operations conducted" language. In the abstract, that language, like any phrase suggesting a causal relationship, could be read to incorporate a broad "but for" test (as the Third Circuit did) or a slightly narrower "substantial nexus" test (as the Ninth Circuit adopted). But once it is understood that § 1333 generally and § 1333(b) in particular address a unique jurisdictional problem that arises in connection with structures on the outer continental shelf, there are powerful reasons not to read the statute to extend to injuries on dry land where state law unambiguously applies. This Court understood and applied this principle in *Offshore Logistics*. There, the Court confronted an argument that OCSLA should extend to cover an injury suffered on the high seas. The Court focused on the fact that OCSLA was addressed to the specific jurisdictional problems of offshore structures, and that the distinct jurisdictional questions raised by injuries on the high seas were best addressed by DOHSA. *Offshore Logistics*, 477 U.S. at 218-19. Here, when state law clearly provides respondent a remedy for an injury sustained on dry land, there is likewise no reason to extend OCSLA to

a situation where there is no unique jurisdictional difficulty to be addressed.

More broadly, in the context of statutes directed at domestic concerns, this Court has repeatedly warned against lightly assuming that Congress intended to legislate extraterritorially. *See, e.g.*, *Small v. United States*, 544 U.S. 385, 388 (2005); *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991). In that context, it is fair to assume "that Congress generally legislates with domestic concerns in mind." *Small*, 544 U.S. at 388. But by the same token, when Congress specifically addresses the unique jurisdictional problems presented by structures on the outer continental shelf, courts should not lightly assume that Congress intended to cover domestic situations where state law already provides a remedy. In light of the unique problem OCSLA addresses, courts should not casually conclude that it not only covers workers injured during the course of operations on the outer continental shelf, but that it also provides a remedy for those working on dry land or traversing the turnpikes of New Jersey.

3. Other subsections of § 1333 confirm that Congress did not intend that § 1333(b)'s coverage would extend to injury or death occurring off the outer continental shelf. As explained by the Fifth Circuit,

> none of § 1333's other subsections purport[s] to apply beyond the OCS. Section 1333(a), which establishes the Shelf's substantive

> law, applies only to activity that occurs on the OCS. Subsection (c) applies the National Labor Relations Act to unfair labor practices on OCS platforms. Subsection (d) delegates to the Coast Guard the duty of promoting safety on the artificial islands and adjacent waters on the outer Continental Shelf. Subsection (e) extends the Secretary of the Army's authority to prevent obstruction of navigation to those artificial islands, while subsection (f) also focuses on certain legal provisions that apply to these same installations. These subsections demonstrate that Congress intended to regulate the OCS, not those areas that already were governed by state law. Neither Mills nor the Director of the Office of Workers' Compensation identifies any legislative history suggesting that Congress intended to single out OCSLA's workers' compensation scheme for different treatment.

Mills, 877 F.2d at 359 (footnotes omitted).

All of § 1333(b)'s neighboring provisions evince a concern for the special choice of law questions that stem from the broader problem of the absence of clearly applicable law on structures on the outer continental shelf. Section 1333(a) provides a general choice of law rule and extends federal law (which often incorporates state law) to such structures, and § 1333(c) makes clear that the NLRA extends to those structures. There is no reason to interpret the intervening provision, § 1333(b), as doing anything other than extending LHWCA to non-seamen on those same

structures when they were injured by operations for certain qualifying purposes. That is particularly true in light of § 1333(f). That subsection provides:

> The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

This provision, a savings clause of sorts, makes clear that the entirety of section 1333, including § 1333(b), is intended to extend federal law generally, and certain federal laws in particular, to the outer continental shelf. There is certainly no suggestion that one subsection goes much further and extends a unique federal law to circumstances otherwise covered by state law.

The Ninth Circuit drew a different inference from the surrounding provisions, asserting that the other subsections of § 1333 include situs requirements, while subsection (b) does not. "Congress had the ability to craft a situs-of-injury requirement – and did so within the very same section of the statute – yet left it out of subsection (b)." *Valladolid*, 604 F.3d at 1135, Pet. App. 17a. That is doubly wrong. The other subsections did not impose a "situs-of-injury requirement" at all, they simply extended federal laws to govern the unique situs addressed by OCSLA. It is

thus § 1333(b), and not the surrounding provisions, that addresses the situs-of-injury most specifically. That language, moreover, should not be read to cover any injury with a minimal or substantial nexus to the offshore activities. Rather, that language extends LHWCA to the unique situs addressed by OCSLA and then further requires the injury be related to operations for the purposes specified in subsection (b). But injury on the outer continental shelf remains the sine qua non. An injury does not occur "as a result of operations conducted on the outer Continental Shelf" unless the injury occurred on the shelf. This is the only statutory interpretation that is faithful to Congress' overall purpose in enacting the OCSLA – to extend a body of law, including LHWCA, to the seabed, subsoil, and fixed structures of the outer continental shelf.

4. This Court's precedents support an interpretation that limits eligibility for benefits under § 1333(b) to injuries occurring on the outer continental shelf.

In *Offshore Logistics*, 477 U.S. 207, two offshore drilling platform workers were killed when a helicopter carrying them to shore crashed 35 miles off the Louisiana coast. Their widows sued the owner and operator of the helicopter. They claimed they were not limited to pecuniary damages under the DOHSA, 46 U.S.C. §§ 30301-30308, but were also entitled to nonpecuniary damages under the Louisiana wrongful death statute, which applied either of its own force, or

as surrogate federal law under OCSLA. *See* 43 U.S.C. § 1333(a)(2)(A) (2006). This Court held that because the helicopter crash did not occur in the area covered by OCSLA, the maritime remedy for wrongful death under DOHSA controlled. *Offshore Logistics*, 477 U.S. at 220.

While *Offshore Logistics* did not directly involve § 1333(b), both its general reasoning and its specific reference to § 1333(b) point the way to the proper resolution of this case. First, in considering the interaction of OCSLA and DOHSA, the Court did not interpret either in a vacuum, but gave them a scope consistent with the unique problems and geographical areas the two statutes were intended to address. After surveying the jurisdiction confusion that gave rise to DOHSA, the Court unanimously concluded that OCSLA did not reach the injuries that occurred on the high seas.

> We do not interpret § 4 of OCSLA, 43 U.S.C. § 1333 to require or permit us to extend the coverage of the statute to the platform workers in this case who were killed miles away from the platform and on the high seas simply because they were platform workers. Congress determined that the general scope of OCSLA's coverage, like the operation of DOHSA's remedies, would be determined principally by locale, not by the status of the individual injured or killed. Because the fatalities underlying this suit did not arise from an accident in the area covered by

> OCSLA but rather occurred on the high seas, DOHSA plainly was intended to control.

477 U.S. at 219-20.

At the same time that the Court emphasized OCSLA's general focus on the situs of the offshore continental shelf, the Court noted that § 1333(b) uniquely had an additional – not different, but additional – requirement.

> Only one provision of OCSLA superimposes a status requirement on the *otherwise determinative OCSLA situs requirement*; § 1333(b) makes compensation for the death or injury of an "employee" resulting from certain operations on the Outer Continental Shelf payable under the Longshoreman's and Harbor Workers' Compensation Act. We note that because this case does not involve a suit by an injured employee against his employer pursuant to § 1333(b), this provision has no bearing on this case.

477 U.S. at 220 n.2 (emphasis added).

The Court thus recognized that § 1333(b) superimposes a distinct requirement on top of the general situs focus of all the provisions of § 1333, including § 1333(b). Moreover, the Court's description captures the limiting nature of that additional requirement. It does not extend coverage beyond the situs, but rather limits the coverage of LHWCA to employees "resulting from certain operations on the Outer Continental Shelf." *Offshore Logistics*, 477 U.S. at 220 n.2. That

discussion, as well as the Court's broader sensitivity to the unique territorial focus of both OCSLA and DOHSA, both underscore that § 1333(b) applies only to offshore injuries.

The same is true of *Offshore Logistics*' discussion of another of the Court's precedents. In *Offshore Logistics*, this Court referred to its discussion in *Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985), regarding the "status and situs requirements of the Longshoremen's and Harbor Workers' Compensation Act as applied to platform workers making claims against their employers. . . ." *Offshore Logistics*, 477 U.S. at 220. In *Herb's Welding*, a welder who divided his time between oil drilling platforms in state waters and on the outer continental shelf was injured on a platform in state waters. This Court declined to decide whether the welder was entitled to LHWCA benefits, but made clear that such entitlement would depend on the location of injury, as well as the worker's status. Noting "the explicit geographical limitation to the Lands Act's incorporation of the LHWCA," it commented that "Gray would indeed have been covered for a significant portion of his work time, but because of the Lands Act, not because he fell within the terms of the LHWCA. . . . [T]hat statute draws a clear geographical boundary that will predictably result in workers moving in and out of coverage." *Herb's Welding*, 470 U.S. at 427.

These decisions demonstrate that § 1333(b) shares the same basic situs requirement as the remainder of § 1333. Just as § 1333(a) extends federal law generally to the offshore continental shelf, § 1333(b) extends

LHWCA to that same area, just as § 1333(c) extends the NLRA. What makes § 1333(b) different is not that it also applies on dry land. The Court has understood that workers would move in and out of OCSLA coverage and would sometimes be in DOHSA coverage or sometimes be in the coverage of states. What makes § 1333(b) different from the rest of OCSLA is that it "superimpose[s]" an additional requirement – a status requirement – limiting recovery of LHWCA benefits to non-maritime "employees" engaged in offshore operations for certain purposes – "on the otherwise determinative ... situs requirement" found in § 1333(a). *Offshore Logistics*, 477 U.S. at 220 n.2.

This analysis leads to one conclusion: § 1333(b) does not confer benefits on outer continental shelf workers injured on land. This is not just a "plausible reading" of the statute's text, *Mills*, 877 F.2d at 359, it is the only reading faithful to OCSLA's purpose and context, and to this Court's decisions interpreting OCSLA.

B. Two policy considerations support limiting benefits to workers injured on the outer continental shelf.

1. Time and again in recent years, across a wide spectrum of cases and subjects, this Court has extolled the virtues of easy-to-apply, bright-line rules. In *Maryland v. Shatzer*, 130 S. Ct. 1213, 1222-23 (2010), for example, the Court noted that: "It is impractical to leave the answer to that question for

clarification in future case-by-case adjudication; law enforcement officers need to know, with certainty and beforehand, when renewed interrogation is lawful." *See also Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan*, 129 S. Ct. 865, 875-76 (2009) ("ERISA forecloses any justification for enquiries into nice expressions of intent, in favor of the virtues of adhering to an uncomplicated rule: 'simple administration, avoid[ing] double liability, and ensur[ing] that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules'"). The need for bright lines and clear rules is particularly imperative when it comes to jurisdictional tests. In *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1184, 1186, 1193 (2010), the Court placed "primary weight upon the need for judicial administration of a jurisdictional statute to remain as simple as possible," and noted that "administrative simplicity is a major virtue in a jurisdictional statute," and that "[p]redictability is valuable to corporations making business and investment decisions." *See also Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 621 (2002) (explaining, in adopting a bright-line waiver test for state sovereign immunity, that "jurisdictional rules should be clear").

It is equally important to adopt a straightforward, bright-line test for determining eligibility for LHWCA benefits under § 1333(b). A simple rule, like the situs-of-injury test we advocate, will reduce the expense of litigation and assure the same treatment for similarly-situated claimants. The Ninth Circuit's "substantial nexus" test defeats these objectives.

Rather than fostering ease of administration and predictability, the Ninth Circuit would require, in every case, a fact-based inquiry focused on the particulars of a given injury, providing little guidance to employers, employees, administrative law judges or the Benefits Review Board in future cases. If injuries off the outer continental shelf may or may not be covered, depending on how individual administrative law judges weigh the facts of each case, inconsistent eligibility determinations based on similar facts are inevitable.

This case furnishes a good example of the drawbacks to the Ninth Circuit's approach. Although the facts are undisputed (the decedent was assigned to move scrap metal with a forklift at Pacific's onshore facility and suffered fatal injuries while attempting to harvest fruit), the Ninth Circuit declined to decide whether its "substantial nexus" test was satisfied – suggesting that reasonable minds could differ in applying this test to these facts. Instead, it remanded the case for further agency consideration. And the Ninth Circuit's test leaves open the possibility that a land-based worker, like the welder in *Mills*, 877 F.2d 356, might be covered if an administrative law judge determined that his or her work "directly furthers outer continental shelf operations and is in the regular course of such operations." *Valladolid*, 604 F.3d at 1139, Pet. App. 28a.

The Third Circuit's "but for" test is no better: what does it mean for an employee "to be involved in 'any operations conducted on the outer Continental

Shelf . . . ?'" *See Curtis*, 849 F.2d at 809. How would that test apply to the facts in this case? And, would that test also extend LHWCA benefits to workers who never set foot on the outer continental shelf, but participate in land-based activities that assist workers on the shelf (a human resources employee who handles shelf workers' health and pension inquiries? a construction worker building the offshore platforms? a secretary answering the phones for a company engaged exclusively in outer continental shelf operations?). And, to the extent that the Third Circuit's "but for" test is nothing more than a status test, it is in direct conflict with this court's explanation in *Offshore Logistics*, 477 U.S. at 219 that "the general scope of OCSLA's coverage . . . [is] determined principally by locale. . . ."

2. The bright-line situs-of-injury test we advocate would also clarify precisely when employers must purchase insurance covering LHWCA benefits. Under the tests adopted by the Ninth and Third Circuits, employers must purchase both state workers' compensation and LHWCA coverage for land-based workers because it is uncertain whether and when courts will allow land-based workers to obtain LHWCA benefits.

In both circuits, workers who never step on the outer continental shelf potentially could be entitled to LHWCA benefits. Consequently, employers engaged in offshore operations must protect themselves against that potential by purchasing insurance covering land-based workers under both the state worker's

compensation and the federal compensation acts.[2] As the Fifth Circuit explained, if § 1333(b) does not include a situs requirement,

> an employee injured while working on equipment destined for the OCS receives more generous benefits than the employee next to him who suffers an injury building similar equipment destined for land-based uses. To cover this exposure, employers who assign even a small percentage of their employees to constructing, servicing or repairing equipment destined for offshore platforms would have no choice but to purchase insurance coverage for liability under both the state and federal compensation acts. [There is] no evidence indicating that Congress intended to create such a cumbersome and uncertain compensation scheme or that it intended to intrude in a significant way on established state workers' compensation programs.

Mills, 877 F.2d at 362.

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[2] An employer's failure to secure required LHWCA coverage is punishable by a fine of up to $10,000 or up to one year's imprisonment, or both. If the employer is a corporation, the president, secretary, and treasurer are severally liable for such fine or imprisonment. 33 U.S.C. § 938(a).

C. The Director's proposed test should be rejected because it is contrary to § 1333(b)'s text and purpose.

The Director proposed yet another interpretation of § 1333(b) in its brief in opposition to the petition for writ of certiorari. (Director's Opp. at 14.) That interpretation adds further complexity and is not entitled to deference. An agency position first advanced in a brief to this Court may control when it interprets the agency's own *regulations*. *Compare Auer v. Robbins*, 519 U.S. 452, 461 (1997) (deferring), *with Gonzales v. Oregon*, 546 U.S. 243, 256-58 (2006) (not deferring). But the Court's decisions have not extended this approach to interpretations of a *statute* that an agency first advances in a litigation brief. And this would be a particularly odd context to afford such deference, when the Director's position differs from the decisions reached by the Benefits Review Board.

At best, the Director's interpretation is entitled to *Skidmore* deference. *See Skidmore v. Swift*, 323 U.S. 134, 140 (1944); *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 136 (1997) ("the Director's reasonable interpretation of the Act brings at least some added persuasive force to our conclusion"). Under *Skidmore*, the Court follows an agency's interpretation only to the extent it is persuasive. *See Christensen v. Harris County*, 529 U.S. 576, 587 (2000).

Indeed, as the Director acknowledges, the interpretation in his opposition brief is the third interpretation of § 1333(b) he has urged a court to adopt. (Director's Opp. at 15 n.10.) However, there have been no substantive changes to the statute since its enactment in 1953. The Director's inability to formulate a consistent interpretation of the statute militates against giving his most recent interpretation even the minimal deference to which it would otherwise be entitled.

Turning to substance, the Director's eligibility test, which requires "a nexus between OCS operations and the employer's 'work performed' generally" (Director's Opp. at 14), at least has the virtue of precluding coverage for workers who are entirely land-based. The Director concedes that because "it is undeniable that the OCSLA's primary focus is the OCS itself[,] [c]overing injuries to entirely land-based workers would be in tension with that intent." *Id.* at 15.

Nonetheless, other problems with the Director's test remain. According to the Director, "section 1333(b) is best interpreted as creating a class of OCS workers who retain their Longshore Act coverage when they perform OCS-related work on land." (Director's Opp'n at 15; *see also id.*, n.10 ("the best interpretation of section 1333(b)" is "'that Congress intended to create a class of OCS workers who would retain LHWCA coverage wherever their work activities took them'").) Thus, under the Director's test, if two employees – one an offshore worker and the other a land-based

worker – are injured working side-by-side constructing a drilling platform (which presumably constitutes "OCS-related work"), the first is entitled to LHWCA benefits while the second is not. The Director fails to explain how providing more generous compensation to the first employee based on the fortuity that he generally works on the outer continental shelf can be squared with Congress' purpose to provide protection for "workers employed in the dangerous oil field extraction industry." *Mills*, 877 F.2d at 358. And the Director's test is also at odds with this Court's observation that OCSLA "superimposes a status requirement on the otherwise determinative OCSLA situs requirement." *Offshore Logistics*, 477 U.S. at 220 n.2.

The Director says his proposed test is analogous to the test developed in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995), which held workers are entitled to Jones Act coverage if they have a "'connection to a vessel . . . that is substantial in terms of both its duration and its nature.'" Director's Opp'n, at 16, quoting *Chandris* at 368. But the Jones Act analogy undermines any claim for deference to the Director's interpretation of OCSLA. Eligibility for benefits under the Jones Act hinges solely on a worker's status, not where the injury occurs. *Chandris*, 515 U.S. at 359-60 ("Jones Act coverage . . . depends, not on the place where the injury is inflicted . . . but on the nature of the seaman's service, his status as a member of the vessel, and his relationship as such to the vessel and its operation in navigable waters.").

In contrast, "Congress determined that the general scope of OCSLA's coverage . . . would be determined principally by locale. . . ." *Offshore Logistics*, 477 U.S. at 219. Because eligibility for Jones Act coverage depends on status, and eligibility for benefits under OCSLA depends on locale, the Director's proposal that this Court borrow its *Chandris* test is misplaced.

Finally, under the Director's test, there need not be "a strict nexus between OCS operations and the particular task a worker was performing at the moment of injury. . . ." All that is required is that an employee "perform OCS-related work on land." Director's Opp'n, at 15-16. It is unclear what constitutes "OCS-related work" under this proposed test. Would it include the decedent's assignment to move scrap metal with a forklift? The Director's brief does not even hint at what the answer might be. Thus his proposed test suffers from the same lack of simplicity and predictability as the Ninth Circuit's "substantial nexus" test and the Third Circuit's "but for" test and should be rejected for the same reasons.

CONCLUSION

The judgment of the Court of Appeals should be reversed. The final order of the Benefits Review Board denying respondent's claim should be reinstated.

Respectfully submitted,

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RESPONDENT'S BRIEF

No. 10-507

In the Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP, ET AL.,
PETITIONERS

v.

LUISA L. VALLADOLID, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT

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QUESTION PRESENTED

The Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, extends workers' compensation coverage under the Longshore and Harbor Workers' Compensation Act (Longshore Act), 33 U.S.C. 901 *et seq.*, to the disability or death of an employee "resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of" exploiting the Shelf's natural resources. 43 U.S.C. 1333(b). The question presented is:

Does 43 U.S.C. 1333(b) extend Longshore Act coverage only to employees injured on the outer Continental Shelf itself?

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In the Supreme Court of the United States

No. 10-507

PACIFIC OPERATORS OFFSHORE, LLP, ET AL., PETITIONERS

v.

LUISA L. VALLADOLID, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-34) is reported at 604 F.3d 1126. The decision and order of the Benefits Review Board of the United States Department of Labor (Pet. App. 35-52) is reported at 42 Ben. Rev. Bd. Serv. (MB) 67. The decision and order of the administrative law judge (Pet. App. 53-93) is reported at 41 Ben. Rev. Bd. Serv. (MB) 795.

JURISDICTION

The judgment of the court of appeals was entered on May 13, 2010. A petition for rehearing en banc was denied on July 19, 2010 (Pet. App. 94-95). The petition for a writ of certiorari was filed on October 13, 2010, and

was granted on February 22, 2011. 131 S. Ct. 1472. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reprinted in the appendix to this brief. App., *infra*, 1a-5a.

STATEMENT

1. a. The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, and the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, were enacted in 1953 to provide "for the orderly development of offshore resources." *United States* v. *Maine*, 420 U.S. 515, 527 (1975). Subject to certain exceptions, the Submerged Lands Act extended the boundaries of coastal States to include the seabed within three miles of their coasts. 43 U.S.C. 1301, 1311(a), 1312. The OCSLA affirmed the federal government's primary authority over the outer Continental Shelf (Shelf or OCS), which it defined as "all submerged lands lying seaward and outside of [the Submerged Lands Act's three-mile limit], and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. 1331(a), 1332(1).

The OCSLA created a body of substantive law to govern the Shelf and certain activities related to it. The statute did so by, among other things: "extend[ing]" federal "laws and civil and political jurisdiction * * * to the subsoil and seabed of the outer Continental Shelf," as well as "to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed" erected "for the purpose of exploring for, developing, or producing resources therefrom, or * * * transporting such resources," (collectively,

OCS platforms), 43 U.S.C. 1333(a)(1); adopting the civil and criminal laws of the adjacent State as federal law on the OCS and OCS platforms, 43 U.S.C. 1333(a)(2)(A); extending the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.*, to "any unfair labor practice * * * occurring upon any [OCS platform]," 43 U.S.C. 1333(c); authorizing the Coast Guard to regulate safety and health on OCS platforms and the surrounding waters, 43 U.S.C. 1333(d); extending the Army's authority to prevent navigation obstructions to OCS platforms, 43 U.S.C. 1333(e); and vesting the Secretary of the Interior with rulemaking authority "relating to the leasing of the [OCS]," 43 U.S.C. 1334.

b. One of the federal statutes specifically extended by the OCSLA is the Longshore and Harbor Workers' Compensation Act (LHWCA or Longshore Act), 33 U.S.C. 901 *et seq.* The Longshore Act was enacted in 1927 to create a federal workers' compensation regime after this Court ruled that state workers' compensation laws could not constitutionally cover longshore workers injured on the seaward side of a pier. See generally *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. 249, 256-258 (1977) (discussing history). At the time Congress enacted the OCSLA, the Longshore Act provided for compensation for "disability or death," "but only if the disability or death results from an injury occurring upon the navigable waters of the United States." 33 U.S.C. 903(a) (1952).[1] Like other workers' compensa-

[1] In 1972, Congress expanded the Longshore Act's situs requirement to include certain adjoining land areas and added a status test, limiting coverage to workers engaged in maritime employment. *Caputo*, 432 U.S. at 263-265; 33 U.S.C. 902(3), 903(a). In *Director, OWCP* v. *Perini North River Associates*, 459 U.S. 297 (1983), the Court held that the new status test did not withdraw coverage from workers injured

tion regimes, the Longshore Act benefits employees by providing compensation regardless of fault and benefits employers by providing immunity from ordinary tort liability for workplace injuries. See 33 U.S.C. 904(b), 905(a).

The OCSLA's extension of the Longshore Act to OCS workers was originally effected by 43 U.S.C. 1333(b) and (c) (1958), which provided, in pertinent part:

> (b) Jurisdiction of United States district courts
>
> The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf * * * .
>
> (c) Applicability of Longshoremen's and Harbor Workers' Compensation Act; definitions
>
> With respect to disability or death of an employee resulting from any injury occurring as the result of operations described in subsection (b) of this section, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

In 1978, the OCSLA was amended for various reasons unrelated to workers' compensation, and certain

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on the actual navigable waters who would have been covered prior to the 1972 amendments. See *id.* at 315; see also *id.* at 318 (Congress intended the new "status requirement" only "to define the scope of the extended landward coverage," not to impose an eligibility limitation with respect to those injured upon the actual navigable waters.).

provisions were reorganized. See H.R. Rep. No. 590, 95th Cong., 1st Sess. 53-55 (1977). Among the changes, Congress separated the district court jurisdictional provision (now found in 43 U.S.C. 1349) and the Longshore Act extension (now found in 43 U.S.C. 1333(b)). Since that time, Section 1333(b) has provided in relevant part:

> With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshore and Harbor Workers' Compensation Act.

43 U.S.C. 1333(b).

c. In a pair of decisions, the Fifth Circuit was the first court of appeals to consider Section 1333(b)'s application to employees injured in locations other than on OCS platforms. See *Stansbury* v. *Sikorski Aircraft*, 681 F.2d 948, cert. denied, 459 U.S. 1089 (1982); *Barger* v. *Petroleum Helicopters, Inc.*, 692 F.2d 337, cert. denied, 461 U.S. 958 (1983). Both cases involved fatal helicopter crashes into the high seas above the OCS during trips to or from OCS platforms. *Stansbury*, 681 F.2d at 950; *Barger*, 692 F.2d at 340. The high seas are not included in the OCSLA's definition of the outer Continental Shelf. See 43 U.S.C. 1331(a), 1333(b)(3); see also 43 U.S.C. 1332(2) ("[The OCSLA] shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas * * * shall not be affected.").

Both *Stansbury* and *Barger* rejected the contention that Section 1333(b) extends LHWCA coverage only to injuries occurring on the OCS or OCS platforms. *Stansbury*, 681 F.2d at 950 ("We have construed [Section 1333(b)] to apply to injuries occurring as a result of the operations described without regard to the physical situs of the injury.") (citing *Nations* v. *Morris*, 483 F.2d 577, 584 (5th Cir.), cert. denied, 414 U.S. 1071 (1973)); *Barger*, 692 F.2d at 340. Both decisions found that the deceased workers were covered by the Longshore Act, as extended by Section 1333(b), because their deaths would not have occurred "but for" operations on the OCS. *Stansbury*, 681 F.2d at 951 ("Stansbury was inspecting work done under his supervision on a fixed rig located on the OCS. His work furthered the rig's operations and was in the regular course of the extractive operations on the OCS. But for those operations, he would not have been in the helicopter. His death, therefore, occurred 'as a result of operations' as required by the OCSLA."); *Barger*, 692 F.2d at 340 ("Barger * * * would not have been killed in a helicopter crash in the Gulf of Mexico 'but for' the fact that he was employed to transport eleven workers to a fixed platform on the Shelf. His work furthered mineral exploration and development activities and was in the regular course of such activities.").

The Third Circuit followed the Fifth Circuit's approach in *Curtis* v. *Schlumberger Offshore Service, Inc.*, 849 F.2d 805 (1988). Curtis worked on an OCS drilling rig more than three miles from the New Jersey coast. *Id.* at 806. After a week on the rig, he returned to his employer's Rhode Island headquarters, but was immediately ordered back to the Shelf. *Ibid.* While driving a company car to meet the helicopter that would

take him back to the rig, he was struck by another vehicle and suffered serious injuries. *Ibid.* The Third Circuit held that Curtis's injury was covered by the Longshore Act, as extended by Section 1333(b), because the injury would not have occurred "but for" operations on the OCS; in that court's view, his injury thus "occurr[ed] as the result of operations" on the OCS. *Id.* at 809-811; 43 U.S.C. 1333(b).

The issue next arose in *Mills* v. *Director, OWCP*, 846 F.2d 1013 (5th Cir. 1988). Unlike Stansbury, Barger, and Curtis, Mills worked solely on land. *Mills* v. *McDermott, Inc.*, 17 Ben. Rev. Bd. Serv. (MB) 756, 758 (ALJ 1985). He was injured while welding a platform destined for the OCS. *Ibid.* A Fifth Circuit panel again held that Section 1333(b) has no situs-of-injury requirement, and concluded that Mills's injury was covered by the LHWCA as extended by Section 1333(b). *Mills*, 846 F.2d at 1015.

The Fifth Circuit granted rehearing en banc and reversed. See *Mills* v. *Director, OWCP*, 877 F.2d 356, 362 (1989) (en banc). The en banc court found Section 1333(b)'s "bare language" to be "open to interpretation," *id.* at 359, but concluded that the provision, "when read in light of the legislative history of OCSLA and the Congressional purpose underlying its enactment, impose[s] a situs requirement for LHWCA coverage[.]" *Id.* at 362. Specifically, the court in *Mills* held that Section 1333(b) extends the Longshore Act only to workers who "suffer injury or death on an OCS platform or the waters above the OCS." *Ibid.*[2]

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[2] Because *Mills* defined the situs as including the waters above the OCS, it did not overrule *Stansbury* or *Barger*. *Mills*, 877 F.2d at 361-362.

2. Luisa L. Valladolid (respondent)[3] is the widow of Juan Valladolid (Valladolid), who was employed as a roustabout by petitioner Pacific Operators Offshore, LLP (Pacific Operators), an oil exploration and extraction company. J.A. 9, 25, 70. Valladolid spent approximately 98% of his time working on one of Pacific Operators' oil platforms on the OCS, more than three miles from the California coast. Pet. App. 3; J.A. 9, 26, 37, 40, 51. "As a roustabout, his work primarily consisted of cleaning and maintenance duties: picking up litter, emptying trash cans, washing decks, painting, fixing equipment, and helping load and unload the platform crane." Pet. App. 3.

Valladolid spent the remaining two percent of his working time at his employer's crude oil plant, called "La Conchita," in Ventura, California. J.A. 9, 40, 51, 75, 80. That plant received and processed crude oil slurry from Pacific Operators' two drilling platforms on the OCS. Pet. App. 3. Petitioner performed a variety of duties at La Conchita, "including painting, sandblasting, weed-pulling, cleaning drain-culverts, and operating a forklift." *Ibid.* On June 2, 2004, while working at La Conchita, Valladolid was ordered to use a forklift to clean up scrap metal debris that had been delivered to the plant from Pacific Operators' OCS platforms. J.A. 10, 13, 55-56, 77, 78-79. He was crushed by the forklift and killed.[4] J.A. 10-11, 14-15, 27.

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[3] The Director, Office of Workers' Compensation Programs, on whose behalf this brief is filed is also a respondent in this Court. But for ease of reference, this brief will refer to Ms. Valladolid as respondent.

[4] According to the accident report, at the time of his death, Valladolid had been cutting plantains from a tree at the worksite rather than moving scrap metal. J.A. 10-11, 13-15, 18-19. Only injuries "arising out

a. Following her husband's death, respondent received death benefits under California's workers' compensation program. Pet. App. 54. She also filed a claim for Longshore Act benefits, both directly and as extended by Section 1333(b). *Ibid.*[5] After the parties failed to resolve the claim voluntarily, it was referred to an administrative law judge (ALJ) for a formal hearing. See 33 U.S.C. 919(c) and (d).

b. The ALJ dismissed the claim for benefits on the ground that Valladolid's injury was not covered by Section 1333(b) because it occurred on land. Pet. App. 92-93.[6] The Department of Labor's Benefits Review Board

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of and in the course of employment" are compensable under the Longshore Act. 33 U.S.C. 902(2). Valladolid's apparent deviation from his assigned duties, however, does not necessarily defeat respondent's claim. Cf. *O'Leary* v. *Brown-Pacific-Maxon, Inc.*, 340 U.S. 504, 506-507 (1951) (33 U.S.C. 902(2) does not require "that the employee be engaged at the time of the injury in activity of benefit to his employer."). Pacific Operators submitted a claim and paid benefits under California's workers' compensation scheme immediately after Valladolid's death. Pet. App. 54. The California statute covers an employee's injuries occurring while "performing service growing out of and incidental to his * * * employment and * * * [while] acting within the course of his * * * employment." Cal. Lab. Code § 3600(a)(2) (West Supp. 1989). In any event, because the ALJ dismissed respondent's claim based on the situs-of-injury ground at issue in this case, the question whether Valladolid's injury arose out of his employment was not addressed below and is not before the Court.

[5] As a surviving spouse without dependents (J.A. 5), respondent would be entitled under the Longshore Act to $464.11 per week—50% of Valladolid's average weekly wage at the time of his death—until her death or remarriage. 33 U.S.C. 909(b); Pet. App. 38 n.2. If respondent ultimately obtains Longshore Act benefits, petitioners will be entitled to offset any payments made under the California law. 33 U.S.C. 903(e).

[6] The ALJ also denied respondent's direct Longshore Act claim, on two independent grounds. First, the ALJ found that Valladolid did not have "status" as a maritime employee under 33 U.S.C. 902(3) because

(Board) affirmed. *Id.* at 35-52. The Board agreed with the ALJ's conclusion that the OCSLA's extension of the Longshore Act contains a situs-of-injury requirement, declaring that Section 1333(a)(1) limits the coverage of all of the OCSLA to "'the subsoil and seabed of the [OCS] and to all * * * devices * * * attached to the seabed.'" *Id.* at 49 (quoting 43 U.S.C. 1333(a)(1)).

c. The court of appeals reversed, holding that "the language of [Section] 1333(b) is unambiguous in not including a situs-of-injury requirement." Pet. App. 18. The court focused on Section 1333(b)'s text, which "provides workers' compensation benefits for 'any injury occurring *as the result of* operations conducted on the outer Continental Shelf.'" *Id.* at 15 (quoting 33 U.S.C. 1333(b)). The court explained:

> The situs-of-operations requirement is clear; the *operations* must be conducted on the [OCS.] However, the only limitation on the *injury* is that it be "the result of" operations on the [OCS]. * * * [T]he phrase "as the result of" simply denotes causation. Thus, the most natural reading of [Section] 1333(b)

"[w]hatever loading and unloading [he] did was incidental to his primary role as a roustabout on the offshore platforms and the La Conchita site." Pet. App. 79. Second, the ALJ concluded that the La Conchita facility was not an LHWCA-covered "situs" because it was not "upon the navigable waters of the United States" or an "adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel." *Id.* at 82 (quoting 33 U.S.C. 903(a)). The Benefits Review Board and court of appeals affirmed the ALJ's finding that the La Conchita facility was not a Longshore Act-covered situs. *Id.* at 32, 42-43. Neither decision addressed Valladolid's status as a maritime employee. *Id.* at 34, 43 n.5. Respondent's direct Longshore Act claim is not before the Court.

> provides coverage for any injury *caused by* [OCS] operations regardless of where the injury occurred.

Pet. App. 15 (internal citations omitted).

The court of appeals found further support for its conclusion by comparing Section 1333(b) with its neighbor, Section 1333(c), which extends the NLRA to "any unfair labor practice * * * occurring upon any [OCS platform,]" 43 U.S.C. 1333(c). The lack of similar situs language in Section 1333(b), the court of appeals reasoned, "reflects an intent not to limit that subsection in the same manner." Pet. App. 17. The court of appeals found nothing in the OCSLA's legislative history to overcome its natural reading of Section 1333(b)'s text, and it rejected petitioners' policy arguments as irrelevant in the face of the provision's plain language. *Id.* at 22-24.[7]

While the court of appeals joined the Third Circuit in rejecting a situs-of-injury requirement, it declined to adopt that court's "but for" causation test for determining whether the Longshore Act applies to a particular off-Shelf injury. Pet. App. 28 (citing *Curtis*, 849 F.2d at 811). In the court of appeals' view, a "but for" test was overly broad because "[i]njuries with a tenuous connection to the [OCS]" should not be covered. *Ibid.* Accordingly, the court of appeals concluded that Section 1333(b) extends Longshore Act coverage only to injuries

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[7] The court of appeals also rejected petitioners' separate argument, adopted by the Board, that Section 1333(a)(1) establishes a situs requirement for all of Section 1333, including Section 1333(b). Pet. App. 24-25; see *id.* at 49. The court found that theory to be unsupported by Subsection (a)'s text and undermined by the fact that Subsections (c) and (d) have situs requirements that differ from Subsection (a)'s. *Id.* at 24-26. Petitioners do not renew their argument based on Section 1333(a)(1) before this Court.

with a "substantial nexus" to OCS operations, explaining:

> To meet the standard, the claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations. An injury sustained during employment on the outer continental shelf itself would, by definition, meet this standard. However, an accountant's workplace injury would not be covered even if related to outer continental shelf operations, while a roustabout's injury in a helicopter en route to the outer continental shelf likely would be.

Ibid. Because the ALJ and the Board had denied respondent's OCSLA claim only because it did not satisfy the situs-of-injury requirement that the court of appeals rejected, the court remanded the case to the Board to apply the court's "substantial nexus" test and determine in the first instance whether respondent was entitled to benefits. *Id.* at 30, 34.

SUMMARY OF ARGUMENT

The court of appeals correctly concluded that 43 U.S.C. 1333(b)'s extension of the Longshore Act is not limited to injuries occurring on the Outer Continental Shelf. Employees who spend a substantial portion of their work time on the Shelf should be covered for all their work-related injuries, even if those injuries occur in a different location.

1. a. The OCSLA extends workers' compensation coverage under the Longshore Act to the "disability or death of an employee resulting from any injury occurring *as the result of operations conducted on* the outer Continental Shelf." 43 U.S.C. 1333(b) (emphasis added). The phrase "as the result of operations conducted on"

cannot fairly be read to mean "on" or to otherwise establish a location-based requirement for the "injury." The plain language of Section 1333(b) requires only that the "operations" take place on the Shelf and that there be some form of causal nexus between those operations and the injury.

This natural reading of Section 1333(b) is confirmed by comparing it to neighboring provisions in Section 1333 that include explicit situs requirements. For example, Section 1333(a)(1) extends federal law "to the subsoil and seabed of the [OCS] and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed." 43 U.S.C. 1333(a)(1). Section 1333(c) extends the NLRA to unfair labor practices "occurring upon any artificial island, installation, or other device referred to in subsection (a)." 43 U.S.C. 1333(c). The lack of similar language in Section 1333(b)—which covers "injur[ies]" that "occur[] as the result of operations conducted on the [OCS]," instead of only injuries that occur "on" or "upon" the OCS—demonstrates that Congress did not intend to impose a situs-of-injury requirement in that provision.

b. Contrary to petitioners' contentions, this Court's decisions in *Offshore Logistics, Inc.* v. *Tallentire*, 477 U.S. 207 (1986) and *Herb's Welding, Inc.* v. *Gray*, 470 U.S. 414 (1985), do not support a situs-of-injury requirement. Neither case involved Section 1333(b). In *Offshore Logistics*, the Court declined to extend an adjacent State's wrongful death statute to the high seas above the OCS because those waters are not among the locations enumerated in 43 U.S.C. 1333(a)(2)(A) where state law governs. 477 U.S. at 217-220. That holding has no bearing on the meaning of Section 1333(b). In *Herb's Welding*, the Court held that the Longshore Act

did not directly cover a worker injured on an oil platform in state territorial waters because the worker was not engaged in "maritime employment," as required by 33 U.S.C. 902(3). 470 U.S. at 424-427. The "maritime employment" requirement, however, does not apply to Section 1333(b)'s extension of the Longshore Act. Dicta in the two decisions stating that Section 1333(b) includes a geographic limitation are consistent with the view that the provision includes a situs requirement, but that the situs requirement applies to the relevant *operations*, not the resulting injuries.

c. Petitioners' legislative history arguments are irrelevant because the text of Section 1333(b) precludes a situs-of-injury requirement. Even if the legislative history were considered, however, it is inconclusive on the question presented. Petitioners correctly point out that Section 1333(b) was designed, at least in part, to provide a workers' compensation regime for the OCS itself, and workers who spend a substantial amount of their time on the Shelf are properly included in such a regime. But petitioners point to no clear evidence demonstrating that Congress intended to accomplish only the goal of providing compensation for on-Shelf injuries, and the controlling statutory text indicates that Congress intended a wider scope of coverage.

Petitioners' policy arguments in favor of its "bright-line" situs-of-injury rule likewise do not justify imposing on the text of Section 1333(b) a limitation it does not contain. In any event, the rule proposed in this brief by the Director of the Office of Workers' Compensation Programs (Director), which would cover workers who spend a substantial portion of their overall work on the Shelf, would be easy to administer and would not make coverage determinations contingent on what

employment-related task the worker was performing at the time of the injury. Although petitioners complain that the Director's interpretation of the statute would require dual workers' compensation coverage under some circumstances, petitioners' interpretation would do the same—requiring LHWCA coverage for employees while working on the Shelf and state coverage for the same employees while working elsewhere.

2. Because Section 1333(b) does not impose a situs-of-injury test, it extends Longshore Act coverage to at least some injuries suffered off the Shelf. The text of Section 1333(b) does not compel one specific answer as to which particular offshore injuries are covered, but the Director believes that it is most sensibly interpreted to extend Longshore Act coverage to only the off-Shelf injuries of those workers who spend a substantial portion of their work time on the OCS engaging in operations to exploit the Shelf's natural resources. This proposed status test is consistent with Section 1333(b)'s text because it limits that provision's landward extension to workers so closely connected with operations on the Shelf that their employment, and therefore their employment-related injuries, can reasonably be said to occur "as the result of" those operations.

To determine whether an employee is a member of this class, the Director suggests adapting the status test developed in *Chandris, Inc.* v. *Latsis*, 515 U.S. 347, 368 (1995), which limits Jones Act coverage to employees with a connection to a vessel or fleet that is both substantial in nature and substantial in duration. The test would also be relatively easy to administer, would provide predictability to employees and employers, and would harmonize the scope of OCSLA coverage for employees working on fixed offshore oil rigs with the scope

of Jones Act coverage for those who work on floating rigs.

If the Court does not adopt the Director's status-based test, the court of appeals' "substantial nexus" test is the best alternative. Although the court of appeals' test would create some uncertainty and could potentially extend benefits to workers who never actually work on the Shelf and are injured on land, it is at least faithful to the statute's text and would often yield the same results as the Director's proposed test.

Either the Director's test or the court of appeals' test is preferable to the Third Circuit's standard, which extends compensation to all employee injuries that would not have occurred "but for" operations on the Shelf. *Curtis* v. *Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 809, 811 (1988). In a variety of contexts, the Court has interpreted causation-based language like that found in Section 1333(b) not to require simplistic "but for" tests, which can lead to overly broad coverage. Similarly, it is unlikely that Congress intended OCSLA to extend Longshore Act coverage to employees with only tenuous connections to operations on the Shelf.

ARGUMENT

I. THE OCSLA'S EXTENSION OF LONGSHORE ACT COVERAGE IS NOT LIMITED TO INJURIES OCCURRING ON THE OUTER CONTINENTAL SHELF ITSELF

In the OCSLA, Congress extended Longshore Act coverage to all injuries "occurring as the result of operations conducted on the [OCS]." 43 U.S.C. 1333(b). That phrase, especially when read in light of neighboring provisions of the statute using contrasting language, requires that the "operations" take place on the Shelf, but not that the injury occur there as well. This provision is

best interpreted to cover all work-related injuries, including those occurring off the Shelf, to employees who spend a substantial amount of their time on the Shelf furthering their employers' operations there. That interpretation is consistent with both Congress's textual choice not to impose a situs-of-injury requirement and its goal of providing comprehensive coverage to OCS workers.[8]

A. Section 1333(b) Precludes A Situs-Of-Injury Requirement

1. The question of Section 1333(b)'s meaning "begins where all such inquiries must begin: with the language of the statute itself." *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). "In this case it is also where the inquiry should end, for where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *Ibid.* (quoting *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917)).

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[8] This brief is filed on behalf of the Director of the Department of Labor's Office of Workers' Compensation Programs (OWCP), who administers the Longshore Act and its extensions, such as the extension made by the OCSLA. See *Metropolitan Stevedore Co.* v. *Rambo*, 521 U.S. 121, 136 (1997). The Director is a party-respondent when a petition is filed seeking judicial review of a decision of the Benefits Review Board. See *Ingalls Shipbuilding, Inc.* v. *Director, OWCP*, 519 U.S. 248, 262-270 (1997). The Director's interpretation of Section 1333(b) is entitled to *Skidmore* deference. *Rambo*, 521 U.S. at 136 (citing *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944)). The fact that the Benefits Review Board gave a different interpretation to the Act (Pet. Br. 35) is irrelevant. See *Potomac Elec. Power Co.* v. *Director, OWCP*, 449 U.S. 268, 278 n.18 (1980) (The Board "is not a policymaking agency; its interpretation of the LHWCA thus is not entitled to any special deference from the courts.").

Section 1333(b) extends workers' compensation coverage under the Longshore Act to the "disability or death of an employee resulting from any injury occurring *as the result of* operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources * * * of the outer Continental Shelf." 43 U.S.C. 1333(b) (emphasis added). This provision has only one location-based requirement: the "operations" from which the employee's injury results must be located "on the outer Continental Shelf." *Ibid.* Nothing in Section 1333(b) establishes the additional location requirement petitioners advocate, *i.e.*, that the "injury" also take place on the OCS. Pet. Br. 23-26.

The phrase, "as the result of operations conducted on the outer Continental Shelf," cannot fairly be read to mean "on the outer Continental Shelf" or to otherwise establish a situs-of-injury test. Instead, the phrase "as the result of" is one of causation. See *Brown* v. *Gardner*, 513 U.S. 115, 119 (1994) (observing that the phrase "as a result of" in 38 U.S.C. 1151 "is naturally read simply to impose the requirement of a causal connection"). Even petitioners ultimately acknowledge that "as the result of operations" is a "phrase suggesting a causal relationship." Pet. Br. 22.

2. The absence of a situs-of-injury requirement in Section 1333(b) is confirmed by comparing that subsection with the others in Section 1333. Unlike Section 1333(b), those provisions impose express situs requirements on their subject matter. See 43 U.S.C. 1333(a)(1) (extending the Constitution, laws, and jurisdiction of the United States "to the subsoil and seabed of the [OCS] and to all artificial islands, and all installations and other devices permanently or temporarily attached to

the seabed"); 43 U.S.C. 1333(c) (applying NLRA to unfair labor practices "*occurring upon* any artificial island, installation, or other device referred to in subsection (a)") (emphasis added); 43 U.S.C. 1333(d)(1) (empowering Coast Guard to promulgate and enforce safety regulations "*on* the artificial islands, installations, and other devices referred to in subsection (a)" and "*on* the waters adjacent thereto") (emphasis added).

The absence of such a location limitation in Section 1333(b) with respect to covered injuries is also underscored by contrasting that provision with the Longshore Act itself. Congress's obvious goal in drafting what is now Section 1333(b) was to extend Longshore Act coverage, so the language and structure of that underlying statute was clearly before Congress at the time it enacted the OCSLA in 1953. At that time, the Longshore Act provided that "[c]ompensation shall be payable under this chapter in respect of disability or death of an employee, *but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock).*" 33 U.S.C. 903(a) (1952) (emphasis added). The fact that Congress in the OCSLA made "compensation * * * payable" under the Longshore Act, but substituted an "as the result of" test for the express "occurring upon" test in the incorporated statute, cannot be attributed to mere happenstance.

The other subsections in Section 1333, as well as the Longshore Act, show that Congress would have used different language had it wanted to extend Longshore Act coverage only to injuries incurred on OCS structures themselves. For example, Congress could have written Section 1333(b) to include a situs-of-injury requirement by providing coverage for "disability or death

of an employee resulting from any injury occurring on the outer Continental Shelf," or for "disability or death of an employee resulting from any injury occurring on the outer Continental Shelf as a result of operations conducted on the Shelf." *Mills* v. *Director, OWCP*, 877 F.2d 356, 363 n.1 (5th Cir. 1989) (en banc) (Duhe, J., dissenting). Congress did not do so, however, and that choice should be given effect.

Petitioners argue that the neighboring provisions in Section 1333 reflect Congress's particular concern with OCS structures and that those provisions' situs requirements should therefore be read into Section 1333(b) as well. Pet. Br. 23-26. Well-settled principles of statutory construction point in the opposite direction. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Kucana* v. *Holder*, 130 S. Ct. 827, 838 (2010) (internal citation omitted).

3. Petitioners contend that the court of appeals improperly "decoupled" the terms "injury" and "operations" in Section 1333(b). Pet. Br. 15. But the court of appeals properly linked those terms the same way Congress did: with the phrase "occurring as the result of." Petitioners have no convincing explanation for why Congress extended Longshore Act coverage to injuries occurring "as the result of" operations on the OCS if Congress meant only to cover injuries occurring "on" OCS platforms.

Petitioners argue that there is no difference between these formulations, asserting that it is impossible, as a matter of "common sense," for an off-OCS injury to result from operations on the Shelf. Pet. Br. 15, 26. That

is incorrect. As the court of appeals pointed out, the "results of an operation may regularly extend beyond its immediate physical location." Pet. App. 16. For example, if an explosion at a platform on the Shelf hurled debris into neighboring state waters, a resulting injury would be a "result of operations conducted" on the Shelf. 43 U.S.C. 1333(b). Yet the injury would not have "occurr[ed] on the shelf." Pet. Br. 15. Likewise, other injuries can plainly "result," in the word's natural causal sense, from operations on the Shelf even if they occur elsewhere.

In an attempt to explain why Congress used the phrase "occurring as the result of" in Section 1333(b), petitioners speculate that Congress "likely" wanted to ensure that workers injured by exposure to harmful substances on the OCS would be covered by the Longshore Act, even if the injury did not manifest itself as a disabling condition until the worker returned to land. Pet. Br. 16. Petitioners point to no legislative history or other evidence suggesting that Congress was concerned about latent injuries when drafting Section 1333(b). Nor would there have been any need for a special statutory phrase to address a concern about latent injuries. The Longshore Act already defined "injury" to include both "accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury." 33 U.S.C. 902(2) (1952). Under that broad definitional provision, a latent injury is an "injury" for purposes of Section 1333(b), and there would have been no need for Congress to provide another textual route to that same destination.

Petitioners' theory about Congress's supposed desire to make special provision in the OCSLA for latent injuries is thus inconsistent with the definitional provisions of the Longshore Act itself. Moreover, at the time the OCSLA was enacted, the Longshore Act applied only to injuries occurring "upon the navigable waters of the United States." 33 U.S.C. 903(a) (1952). If petitioners were correct that the "resulting from" phrase in the OCSLA was necessary to provide coverage for latent injuries, then the absence of such a phrase in the Longshore Act would have meant that disabilities were covered only if they became manifest when the claimant happened to be upon the navigable waters of the United States. Nothing in Longshore Act case law at the time even hints at such a requirement. See *Bernatowicz* v. *Nacirema Operating Co.*, 142 F.2d 385, 387 (3d Cir. 1944) (affirming award of compensation for gangrene manifesting itself seven months after accident on navigable waters); *Fidelity & Cas. Co. of N.Y.* v. *Henderson*, 128 F.2d 1019, 1019-20 (5th Cir. 1942) (affirming award for psychiatric condition manifesting itself after accident).

Petitioners also speculate that Congress included the phrase "occurring as the result of operations" in order to deny recovery for "injuries occurring offshore but with no nexus to operations conducted for the purposes specified in the statute." Pet. Br. 16. Congress could have easily accomplished that goal while also including an express situs-of-injury requirement by covering "disability or death of an employee resulting from any injury occurring on the outer Continental Shelf as a result of operations conducted on the Shelf." *Mills*, 877 F.2d at 363 n.1 (Duhe, J., dissenting). Congress, however, did not do so. In any event, it would have been unnecessary

for Congress to place special protection against recovery for non-work-related injuries in Section 1333(b) because the definition of injury in the Longshore Act was already limited to one that "aris[es] out of and in the course of employment." 33 U.S.C. 902(2) (1952). There is no reason to believe that Congress was concerned about a hypothetical category of employee injuries on the OCS that would arise out of employment but not "occur[] as the result of operations conducted on the [OCS] for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources" of the OCS, 43 U.S.C. 1333(b).

B. This Court's Decisions In *Offshore Logistics* And *Herb's Welding* Do Not Support Petitioners' Contention That Section 1333(b) Imposes A Situs-Of-Injury Requirement

Petitioners acknowledge that neither *Offshore Logistics, Inc.* v. *Tallentire*, 477 U.S. 207 (1986), nor *Herb's Welding, Inc.* v. *Gray*, 470 U.S. 414 (1985), directly involved Section 1333(b), but argue that those decisions nevertheless "point the way to the proper resolution of this case." Pet. Br. 27. The dicta in those opinions upon which petitioners rely do not alter the plain meaning of Section 1333(b) and, in any event, are consistent with the court of appeals' rejection of a situs-of-injury test.

1. *Offshore Logistics* involved Section 1333(a)(2)(A), which generally incorporates as federal law the civil and criminal laws of the adjacent State for the adjoining "portion of the subsoil and seabed of the [OCS], and artificial islands and fixed structures erected thereon." 43 U.S.C. 1333(a)(2)(A). After two OCS workers were killed when a helicopter transporting them back to land crashed into the high seas above the OCS, their widows filed suit against the helicopter operator and claimed

damages available under Louisiana's wrongful death statute, contending that it was applicable by operation of Section 1333(a)(2)(A). *Offshore Logistics*, 477 U.S. at 218. The Court held that Section 1333(a)(2)(A) was not applicable because the accident took place on the high seas, not on the OCS seabed or an attached structure, as required by that provision. *Id.* at 218-220. The widows were accordingly limited to the remedies made available by the Death on the High Seas Act, 46 U.S.C. 761 *et seq.* See 477 U.S. at 220.

In reaching its conclusion, the Court rejected the contention that Section 1333(a)(2)(A) should apply because of the employees' status as OCS workers. *Offshore Logistics*, 477 U.S. at 219. The Court noted that "Congress determined that the general scope of OCSLA's coverage * * * would be determined principally by locale, not by the status of the individual injured or killed." *Ibid.* In a footnote, the Court pointed out that only Section 1333(b) "superimposes a status requirement on the otherwise determinative OCSLA situs requirement." *Id.* at 219 n.2.

There is no inconsistency between the quoted statement and the court of appeals' rejection of a situs-of-injury requirement. Under the court of appeals' interpretation, Section 1333(b) includes both a "determinative * * * situs requirement" (*Offshore Logistics*, 477 U.S. at 219 n.2)—the operations from which the injury results must be "conducted *on* the [Shelf]," 43 U.S.C. 1333(b) (emphasis added)—and a "status requirement" (*Offshore Logistics*, 477 U.S. at 219 n.2)—the injured individual must be an "employee," 43 U.S.C. 1333(b). *Offshore Logistics* provides no support for petitioners' specific conception of Section 1333(b)'s situs requirement, *i.e.*, that the "injury" also must take place

on the Shelf. See Pet. App. 10-11. And in any event, the Court in *Offshore Logistics* was quick to emphasize after its observation about Section 1333(b) that "because this case does not involve a suit by an injured employee against his employer pursuant to § 1333(b), this provision has no bearing on this case." 477 U.S. at 220 n.2. The Court's discussion of Section 1333(b) was therefore "textbook dictum." Pet. App. 9.

2. Petitioners' reliance on dicta in *Herb's Welding* is similarly misplaced. The employee in that case was injured while working on an oil platform in state waters, not on the OCS. 470 U.S. at 416-417. He filed claims for Longshore Act benefits both directly and as extended to OCS workers by Section 1333(b). The Court, however, addressed only his LHWCA claim, emphasizing that it "express[ed] no opinion on his argument that he is covered by 43 U.S.C. § 1333(b)." *Id.* at 427. Finding the employee's work to be "far removed" from traditional LHWCA activities, the Court concluded that he was not directly covered by the Longshore Act because he was not engaged in "maritime employment," as required by 33 U.S.C. 902(3). 470 U.S. at 419-427.

In response to the employee's argument that denying LHWCA benefits under the circumstances of his case would lead to workers oscillating in and out of coverage during their work day, the Court observed that "the inconsistent coverage here results primarily from the explicit geographic limitation to the [OCSLA]'s incorporation of the LHWCA." *Herb's Welding*, 470 U.S. at 426-427. The Court did not elaborate on what it meant by the OCSLA's "geographic limitation," which was not at issue in that case. The Court's statement, however, is consistent with Section 1333(b)'s geographic limitation on covered *operations*. In fact, the injured worker in

Herb's Welding spent roughly three-quarters of his time on platforms in state waters, *id.* at 416, and therefore did not have the sort of substantial connection to the OCS that the Director believes is necessary to bring a worker under OCSLA coverage for off-Shelf injuries. See pp. 32-35, *infra*. In any event, petitioner's contention that the Court meant that statement to express its considered view that the OCSLA contains a situs-of-injury requirement is inconsistent with the Court's subsequent statement that it "express[ed] no opinion" on the argument by the employee—who was injured in State waters, not on the waters above the OCS—"that he [was] covered by 43 U.S.C. § 1333(b)." 470 U.S. at 427. That question, the Court made clear, remained open on remand. *Id.* at 426 n. 12.[9]

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[9] Petitioners also claim to find support in *Small* v. *United States*, 544 U.S. 385, 388 (2005), and *EEOC* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991), which discuss the well-established presumption against interpreting statutes to apply extraterritorially. Pet. Br. 23. Petitioners ask the Court to apply an inverted version of that rule, under which the OCSLA should be presumed not to cover "domestic situations" because it is primarily concerned with the OCS. *Ibid.* As petitioners' own authority explains, the presumption against extraterritoriality is designed "to protect against unintended clashes between our laws and those of other nations which could result in international discord." *EEOC*, 499 U.S. at 248. OCSLA, by contrast, applies to submerged lands "of which the subsoil and seabed appertain *to the United States* and are subject to *its* jurisdiction and control," 43 U.S.C. 1331(a) (emphases added), and foreign relations concerns obviously play no part in the present case. There is accordingly no basis to apply the rule of statutory construction petitioner proposes.

C. Petitioners' Legislative History And Policy Arguments Do Not Undermine The Plain Meaning Of Section 1333(b)

1. Petitioners, like the Fifth Circuit in *Mills*, attempt to find support for a situs-of-injury requirement in the OCSLA's legislative history. See Pet. Br. 17-18, 22; *Mills*, 877 F.2d at 359-360. Because the text of Section 1333(b) on its face precludes a situs-of-injury test, there is no reason to resort to legislative history in this case. See *Chamber of Commerce of U.S.* v. *Whiting*, 131 S. Ct. 1968, 1980 (2011) ("Congress's authoritative statement is the statutory text, not the legislative history.") (internal citation omitted); *Milner* v. *Department of Navy*, 131 S. Ct. 1259, 1266 (2011) ("Those of us who make use of legislative history believe that clear evidence of congressional intent may illuminate ambiguous text. We will not take the opposite tack of allowing ambiguous legislative history to muddy clear statutory language.").

In any event, the OCSLA's legislative history is at best inconclusive on the question presented. It is true that the OCS was in many respects a "jurisdictional no-man's land" prior to the OCSLA, and that filling that void was one of the statute's central goals. Pet. Br. 16-17. Congress's decision to extend Longshore Act coverage to operations on the OCS may therefore have been designed, at least in part, to fill an "obvious void in the law governing the OCS[, namely] * * * the lack of a workers' compensation scheme for thousands of workers employed in the dangerous oilfield extraction industry." *Mills*, 877 F.2d at 358. But both the Director's proposed test and the court of appeals' "substantial nexus" test fill that void in the same way as petitioners' situs-of-injury test; any injury by an employee on the Shelf itself would

plainly satisfy all three tests. The question in this case is whether the OCSLA's coverage extends *beyond* such injuries. The legislative history is silent on that question, but, as discussed above, the statutory text is not. The text requires only that the "operations," not the "injury," occur on the Shelf.

The OCSLA's legislative history suggests that Congress did not choose to pursue the goal of filling any gaps left by state workers' compensation schemes at the expense of all other goals, such as establishing a comprehensive federal system of benefits for Shelf workers. As petitioners acknowledge, an express anti-overlap provision that would have limited the OCSLA's extension of the Longshore Act only to injuries or deaths not covered by state workers' compensation laws "was deleted from an early version of OCSLA." Pet. Br. 20. As the court of appeals pointed out, that deletion "seriously undercut[s] the conception of § 1333(b) as a gap-filler." Pet. App. 20.

Petitioners suggest that Congress deleted the anti-overlap provision because it did not want to deprive OCS workers of more-generous Longshore Act benefits when adjacent state workers' compensation schemes happened to extend to operations on the Shelf. Pet. Br. 21; see *Mills*, 877 F.2d at 360. That rationale for the deletion simply would demonstrate that "gap-filling" was not Congress's exclusive goal; Congress sought to achieve a comprehensive and coherent system of coverage, even if in doing so it extended benefits to workers who would already have been covered by a state scheme.

In all events, "it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998); see *Lewis* v.

City of Chicago, 130 S. Ct. 2191, 2200 (2010) ("It is not for us to rewrite the statute so that it covers only what we think is necessary to achieve what we think Congress really intended."). Regardless of Congress's principal concern in enacting the OCSLA, it directed that the Longshore Act be extended to any "disability or death of an employee resulting from any injury occurring as the result of operations conducted" on the Shelf. 43 U.S.C. 1333(b). That language, not petitioner's hypotheses about why Congress enacted it, controls.

2. Petitioners contend that their situs-of-injury test should be adopted because it would "clarify precisely when employers must purchase insurance covering LHWCA benefits," Pet. Br. 33, and would provide an "easy-to-apply, bright-line rule[]," *id.* at 30. These policy arguments do not advance petitioners' cause and, in any event, are properly addressed to Congress, not this Court.

First, as discussed below, Section 1333(b) is best read to cover the onshore injuries of only those employees who spend a substantial portion of their work time on the OCS. See pp. 32-35, *infra*. That interpretation of the statute does not include a situs-of-injury requirement, but would still be relatively easy to apply and would minimize disputes over coverage.

Moreover, petitioners' proposed interpretation of the statute would itself require employers to "purchas[e] insurance * * * under both the state worker's compensation and the federal compensation acts." Pet. Br. 33-34. As the facts of this case demonstrate, OCS workers sometimes work off the Shelf (whether on land or in a State's territorial waters). Additionally, even OCS workers who spend all their work time on the Shelf must be transported there, and accidents can happen en

route. Under petitioners' strict situs-of-injury interpretation, employers would therefore be required to maintain dual coverage for all their workers—LHWCA coverage for their time on the OCS and state workers' compensation or other coverage for their time spent elsewhere.

Some degree of overlap between state workers' compensation and LHWCA coverage has long been part of the statutory scheme. Indeed, the Longshore Act expressly contemplates that coverage will sometimes overlap; Congress amended the statute in 1984 to manage such overlap by requiring that compensation paid pursuant to "other workers' compensation law" be credited against employers' Longshore Act liability. 33 U.S.C. 903(e); see Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. No. 98-426, § 3(b), 98 Stat. 1641. The possibility of overlapping coverage similarly would not have been a surprise to the Congress that enacted the OCSLA. At that time, this Court had recognized "a twilight zone" of injuries and "marginal employment" that could be compensable both under the Longshore Act and state workers' compensation programs. *Davis* v. *Department of Labor*, 317 U.S. 249, 256 (1942); see *Director, OWCP* v. *Perini N. River Assocs.*, 459 U.S. 297, 309 (1983) (noting that *Davis* recognized an area of "concurrent jurisdiction"). And nine years after enactment of the OCSLA, this Court in *Calbeck* v. *Travelers Ins. Co.*, 370 U.S. 114 (1962), "created further overlap between federal and state coverage for injured maritime workers." *Perini*, 459 U.S. at 309. In construing the Longshore Act, the Court has thus not allowed concerns about potentially overlapping coverage to steer it away from what it considers the best reading of the statute. See *id.* at 308 n.18 (recognizing that in some

circumstances "both state and federal remedies are available to injured workers, and employers with employees working on the shore would have to contribute to state compensation funds in the event that an employee covered by the LHWCA's shoreline extension sought state compensation, or an employee was deemed for whatever reason not to be eligible for LHWCA relief").[10]

In any event, petitioners' policy arguments in favor of a situs-of-injury requirement are beside the point. See *Harris Trust & Sav. Bank* v. *Salomon Smith Barney Inc.*, 530 U.S. 238, 254 (2000) (declining to consider argument about "policy consequences" when "statutory language provide[d] a clear answer") (internal citation omitted). Congress did not include such a requirement in the text of Section 1333(b), and it is for Congress to decide whether limiting coverage in that way is good policy.

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[10] Additionally, adopting a situs-of-injury requirement would not automatically provide an easy-to-administer, bright-line rule, as the Fifth Circuit's experience demonstrates. In *Mills*, that court said that its situs-of-injury requirement extended to "oilfield workers injured on waters above the OCS." 877 F.2d at 361. Yet in *Demette* v. *Falcon Drilling Co.*, 280 F.3d 492 (2002), the Fifth Circuit defined the covered situs to *exclude* the waters over the OCS. See *id.* at 497; see also *Diamond Offshore Co.* v. *A&B Builders, Inc.*, 302 F.3d 531, 543 (5th Cir. 2002). That court recently recognized that it had essentially adopted two different and competing situs tests—one in *Mills* and another in *Demette*. See *Becker* v. *Tidewater, Inc.*, 586 F.3d 358, 367 n.6 (5th Cir. 2009). The confusion in the Fifth Circuit's case law is understandable, given that it is applying a situs-of-injury requirement that does not appear in the statute and that therefore does not have legislatively prescribed contours.

II. SECTION 1333(B) EXTENDS LONGSHORE ACT COVERAGE TO OFF-SHELF INJURIES SUFFERED BY EMPLOYEES WHO SPEND A SUBSTANTIAL AMOUNT OF TIME ON THE OCS

There is no dispute in this case that the OCSLA extends workers' compensation benefits under the Longshore Act to all employees injured while working on the OCS for the purposes enumerated in Section 1333(b). As explained above, however, the statute's coverage is not limited to just those injuries; it extends to "any injury occurring as the result of operations conducted on the [OCS]." 43 U.S.C. 1333(b). It is thus necessary to determine what category of off-Shelf injuries are covered. The text of Section 1333(b) does not compel one specific answer to that question. But in the Director's view, it is most sensibly interpreted to afford Longshore Act coverage to off-Shelf injuries of those workers who spend a substantial portion of their work time on the OCS engaging in operations to exploit the Shelf's natural resources.

A. 1. The Director believes that Section 1333(b) should be interpreted to incorporate a status test extending the Longshore Act to off-Shelf injuries of only those employees who spend a substantial amount of time working on the Shelf. That class of OCS workers would retain their Longshore Act coverage while on duty, wherever their work takes them. Employees not in that class would be covered only for injuries that actually occur on the OCS itself.

This interpretation is consistent with the statutory text. The OCSLA extends Longshore Act coverage to "disability or death of an employee resulting from any injury occurring as the result of operations conducted on

the [OCS]." 43 U.S.C. 1333(b). In the Director's view, an "injury" can "result[]" from Shelf operations in one of two ways. First, an injury to an employee taking place on the Shelf or the high seas above it would qualify. Cf. *Parker* v. *Motor Boat Sales*, 314 U.S. 244, 247 (1941) (Under the Longshore Act, "habitual performance of other and different duties on land cannot alter the fact that at the time of the accident [claimant] was riding in a boat on a navigable river, and it is in connection with that clearly maritime activity that the award was here made.") (footnote omitted); *Perini*, 459 U.S. at 315 (same rule for post-1972 Longshore Act). Second, an off-Shelf injury to an employee who spends a substantial amount of his time on the Shelf furthering the employer's "operations" there also "result[s]" from Shelf operations because those operations are the basis for his employment. *Ibid.*

2. To determine whether an employee is a member of this class, the Director suggests using a test analogous to that developed in *Chandris, Inc.* v. *Latsis*, 515 U.S. 347, 368 (1995) (*Chandris*), for making parallel determinations under the Jones Act, ch. 250, 41 Stat. 988. The Court has previously recognized the connection between the Jones Act and the LHWCA, and there is precedent for using them as mutual interpretive aids. See *Chandris*, 515 U.S. at 356 ("[I]t is odd but true that the key requirement for Jones Act coverage now appears in another statute," *i.e.*, the LHWCA.) (citation omitted); *Stewart* v. *Dutra Constr. Co.*, 543 U.S. 481, 488 (2005) ("[T]he Jones Act and the LHWCA are complementary regimes that work in tandem: The Jones Act provides tort remedies to *sea*-based maritime workers, while the LHWCA provides workers' compensation to *land*-based maritime employees.").

At the time of *Chandris*, the Jones Act "provide[d] a cause of action in negligence for 'any seaman' injured 'in the course of his employment.'" 515 U.S. at 354 (quoting 46 U.S.C. App. 688(a)); see 46 U.S.C. 30104 (current version). In *Chandris*, the Court rejected an "activity-based" test under which "anyone working on board a vessel for the duration of a 'voyage' in furtherance of the vessel's mission has the necessary employment-related connection to qualify as a seaman." 515 U.S. at 358. Instead, the Court adopted a "status-based standard that, although it determines Jones Act coverage without regard to the precise activity in which the worker is engaged at the time of the injury, nevertheless best furthers the Jones Act's remedial goals." *Ibid.* Such a test, the Court explained, would "avoid engrafting upon the statutory classification of a 'seaman' a judicial gloss so protean, elusive, or arbitrary as to permit a worker to walk into and out of coverage in the course of his regular duties." *Id.* at 363 (citation and some internal quotation marks omitted).

Under the standard adopted in *Chandris*, the Jones Act applies to all workers whose "duties * * * contribute to the function of the vessel or to the accomplishment of its mission" and who "have a connection to a vessel * * * that is substantial in terms of both its duration and its nature." 515 U.S. at 368 (internal quotation marks, citation, and brackets omitted). The first requirement "is very broad"; it makes "[a]ll who work at sea in the service of a ship' * * * *eligible* for seaman status." *Ibid.* (internal quotation marks and citation omitted). The second, temporal element of the *Chandris* test recognizes that "[a] maritime worker who spends only a small fraction of his working time on board a vessel is fundamentally land based and therefore not a

member of the vessel's crew, regardless of what his duties are." *Id.* at 371; see *ibid.* (noting that an "appropriate rule of thumb for the ordinary case" is that a "worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman."). At the same time, "maritime workers who obtain seaman status do not lose that protection automatically when on shore and may recover under the Jones Act whenever they are injured in the service of a vessel, regardless of whether the injury occurs on or off the ship." *Id.* at 360.

The Director proposes a similar test for OCS workers, which would provide OCSLA coverage for off-Shelf injuries only for those employees whose duties contribute to operations on the Shelf and who perform work on the Shelf itself that is substantial in terms of both its duration and its nature. Cf. *Chandris*, 515 U.S. at 368. Thus, only employees who spend a substantial amount of time on the OCS working to exploit its mineral wealth would qualify. Cf. *Nunez* v. *B&B Dredging, Inc.*, 288 F.3d 271, 277 (5th Cir. 2002) (employee who spent "100% of her time furthering the mission or function of [a] vessel" does not satisfy *Chandris* test "because the time she spent aboard the vessel was insubstantial"). This class of Shelf workers would be covered for all work-related injuries, no matter where they occur, and the workers would thus not move in and out of coverage throughout the work day depending on their location.[11]

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[11] Petitioners err in contending that the Director's test "suffers from [a] lack of simplicity and predictability" because it would require "that an employee [be] 'perform[ing] OCS-related work on land'" in order to be covered. Pet. Br. 38 (quoting Gov't Br. in Opp. 15). The cited requirement would be satisfied if the employee suffered the injury in the course of employment, just as the Jones Act requirement that

3. Unlike the court of appeals' or petitioner's tests, the Director's test would allow workers who, like Valladolid, spend a substantial portion of their time on the Shelf furthering the employer's extraction operations there to know what benefits to expect in the case of serious disability or death, and therefore to make informed decisions about private insurance or other contingency plans. Likewise, employers would have a greater degree of certainty about which employees would be covered by the LHWCA, without those employees' moving in and out of coverage throughout the work day.

Petitioners observe that this test would grant Longshore Act benefits to an OCS worker injured on land while leaving a non-OCS worker injured on land performing the same task with only a state compensation remedy, and question whether this result "can be squared with Congress'[s] purpose to provide protection for 'workers employed in the dangerous oil field extraction industry.'" Pet. Br. 36-37 (quoting *Mills*, 877 F.2d at 358); see Pet. Br. 21-22. The question contains its own answer. For purposes of the OCSLA, OCS workers like Valladolid—who necessarily spend a substantial portion of their time on the OCS, and are therefore reg-

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seamen off the vessel be "injured in the service of a vessel" to recover, *Chandris*, 515 U.S. at 360, is satisfied if the injury occurs in the course of employment. See *Bruen* v. *Pfeifer Oil Transp. Co.*, 361 U.S. 129, 132-133 (1959); *Higginbotham* v. *Mobil Oil Corp.*, 545 F.2d 422, 432 (5th Cir. 1977) (citing *Bruen* for the proposition that "once it is established that the claimant is a seaman, the Jones Act permits recovery even if he sues for injuries received while off ship and engaged in temporary work for his employer unrelated to service of the ship"), rev'd on other grounds, 436 U.S. 618 (1978). The Director's test for covered work off the Shelf would therefore be straightforward to administer and predictable in its application.

ularly exposed to the particular dangers of offshore work—are not similarly situated with workers who spend little or no time on the OCS.[12] There is no reason to believe Congress wanted those workers to lose the benefit of the more-generous Longshore Act system simply because their employer ordered them to perform a particular task on land for a brief period of time.

4. The Director's test would also harmonize the treatment of employees who work on the two principal types of offshore oil rigs: fixed and floating. See *Herb's Welding*, 470 U.S. at 416 n.2. Floating rigs are "vessels," and thus those who work on such rigs are "seamen" with Jones Act remedies. *Ibid.*; see *Stewart*, 543 U.S. at 489 (interpreting "vessel" broadly for purposes of Jones Act coverage); *Offshore Co.* v. *Robison*, 266 F.2d 769, 773-781 (5th Cir. 1959).[13] Accordingly, offshore workers with a substantial connection to floating rigs are covered by the Jones Act throughout their work day and even if they are injured off the rig. See *Chandris*, 515 U.S. at 360. The Director's test would provide parallel comprehensive coverage under the Longshore Act for offshore workers with a substantial connection to fixed platforms. Under each of the applicable regimes, workers would not "walk into and out of

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[12] Indeed, a central purpose of the *Chandris* test is to identify workers who are "regularly expos[ed] * * * to the perils of the sea," and who are therefore entitled to the benefit of the Jones Act. 515 U.S. at 368. It is similarly reasonable for Section 1333(b) to reserve the benefits of amphibious Longshore Act coverage to workers regularly exposed to the particular dangers of OCS work.

[13] Such individuals would not be covered by the OCSLA even if a floating rig were located on the Shelf because the OCSLA's extension of Longshore Act coverage expressly excludes "a master or member of a crew of any vessel." 43 U.S.C. 1333(b)(1).

coverage in the course of [their] regular duties." *Id.* at 363 (citation omitted).

B. If the Court does not adopt the Director's status-based test, the Director suggests that the Court adopt the court of appeals' interpretation, which provides that Section 1333(b) extends Longshore Act coverage to employees injured on land when there is "a substantial nexus between the injury and extractive operations on the shelf." Pet. App. 28. To meet that standard:

> [T]he claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations. An injury sustained during employment on the outer continental shelf itself would, by definition, meet this standard. However, an accountant's workplace injury would not be covered even if related to outer continental shelf operations, while a roustabout's injury in a helicopter en route to the outer continental shelf likely would be.

Ibid.

For the reasons stated above, the Director believes a status-based test is preferable to a test that would make the coverage determination depend on what the employee was doing at the time of the injury. Under the latter approach (just as under petitioners'), the employee could oscillate in and out of coverage throughout the work day. Moreover, while petitioners' concerns on this score are overstated, the court of appeals' test could present some line-drawing problems about what tasks are sufficiently related to OCS operations to qualify. See Pet Br. 31-32. It also would create the possibility that certain injuries to workers who never actually work

on the Shelf would be covered. Pet. App. 29-30 (favorably citing the panel decision in *Mills*, which extended Longshore Act benefits to a purely land-based worker). Nonetheless, the court of appeals' test reflects a reasonable interpretation of the statutory language; it would cover all injuries to employees taking place on the Shelf; and it would likely cover the lion's share of injuries that Shelf workers incur when they are off the Shelf.

C. In the Director's view, either his proposed status-based test or the court of appeals' "substantial nexus" test is preferable to the Third Circuit's potentially broad standard. In the Third Circuit's view, an employee's injury is covered if it would not have occurred "but for" operations on the Shelf. *Curtis* v. *Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 809, 811 (1988). The Director agrees with the court of appeals in this case that the Third Circuit's test is inadequate because it would seemingly cover "[i]njuries with a tenuous connection to the [OCS]." Pet. App. 28.

While the bare statutory text is susceptible to the Third Circuit's interpretation, it is unlikely that Congress intended to provide for such open-ended LHWCA coverage. This Court has sensibly interpreted similar language in other statutes more narrowly. For example, the liability provision of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq.*, at issue in *Holmes* v. *Securities Investor Protection Corp.*, 503 U.S. 258, 265-266 (1992), gave a private right of action to "[a]ny person injured in his business or property by reason of a violation of [a particular RICO Act provision]." *Id.* at 265 (quoting 18 U.S.C. 1964(c)). The Court acknowledged that "[t]his language can, of course, be read to mean that a plaintiff is injured 'by reason of' a RICO violation, and therefore may recover,

simply on showing that the defendant violated § 1962, the plaintiff was injured, and the defendant's violation was a 'but for' cause of plaintiff's injury." *Id.* at 265-266 (footnote omitted). The Court went on to note, however, that "[t]his construction is hardly compelled * * *, and the very unlikelihood that Congress meant to allow all factually injured plaintiffs to recover persuades us that RICO should not get such an expansive reading." *Id.* at 266 (footnote omitted); see also *Associated Gen. Contractors of Cal., Inc.* v. *California State Council of Carpenters*, 459 U.S. 519, 529, 545-546 (1983) (acknowledging that a "literal reading of [the Clayton Act's private right of action, 15 U.S.C. 15, which gives a private right of action to "[a]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws"] is broad enough to encompass every harm that can be attributed directly or indirectly to the consequences of an antitrust violation," but declining to adopt that interpretation); cf. *CSX Transp., Inc.* v. *McBride*, 131 S. Ct. 2630, 2643 (2011) (noting that juries in cases under Federal Employers' Liability Act, 45 U.S.C. 51 *et seq.*, will not award damages in "far out 'but for' scenarios" if properly instructed).

A simplistic "but for" test could effectively extend LHWCA coverage to all or substantially all employees of an employer that is engaged in extractive operations on the Shelf, no matter where those employees work and what they do. Those workers' duties, and thus their injuries, might not exist "but for" the employer's operations on the OCS. See *Holmes*, 503 U.S. at 266 n.10 ("In a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, and beyond.") (quoting W. Page Keeton *et al.*, *Prosser and Keeton on the Law of*

Torts § 41, p. 264 (5th ed. 1984)). It is unlikely that Congress intended the OCSLA to extend so broadly. Instead, 43 U.S.C. 1336(b) should be interpreted to focus on those workers on whom Congress was focused: those who spend a substantial amount of their time working on the OCS.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

43 U.S.C. 1333 provides:

Laws and regulations governing lands

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however*, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2)(A) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within

the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after September 18, 1978, the President shall establish procedures for setting[1] any outstanding international boundary dispute respecting the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) **Longshore and Harbor Workers' Compensation Act applicable; definitions**

With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshore

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[1] So in original. Probably should be "settling".

and Harbor Workers' Compensation Act [33 U.S.C. 901 et seq.]. For the purposes of the extension of the provisions of the Longshore and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(c) National Labor Relations Act applicable

For the purposes of the National Labor Relations Act, as amended [29 U.S.C.A. § 151 et seq.], any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device.

(d) Coast Guard regulations; marking of artificial islands, installations, and other devices; failure of owner suitably to mark according to regulations

(1) The Secretary of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary.

(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) of this section whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this subchapter, and the owner shall pay the cost of such marking.

(e) Authority of Secretary of the Army to prevent obstruction to navigation

The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to the artificial islands, installations, and other devices referred to in subsection (a) of this section.

(f) Provisions as nonexclusive

The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and

other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

RESPONDENT'S BRIEF

No. 10-507

IN THE
Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP, ET AL.,
Petitioners,

v.

LUISA L. VALLADOLID, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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QUESTION PRESENTED

Section 4(b) of the Outer Continental Shelf Lands Act extends workers' compensation coverage under the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 901 *et seq.*, to "any injury occurring as the result of" specified "operations conducted on the outer Continental Shelf." 43 U.S.C. § 1333(b).

The question presented is:

Does § 4(b) extend LHWCA coverage to an injury suffered by an outer continental shelf worker during the course of employment while performing a task that is causally connected to specified outer continental shelf operations even though the injury itself did not occur on the outer continental shelf?

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INTRODUCTION

In the Outer Continental Shelf Lands Act ("OCSLA"), Congress sought to clarify the applicable law for a range of potential issues as workers and their employers developed the resources of the outer continental shelf ("OCS"). One such issue is the law governing OCS workers' injuries. Instead of a fault-based tort scheme to compensate injured workers of a kind Congress earlier had enacted for railroad employees and seamen, Congress chose to incorporate into OCSLA the workers' compensation benefits of the Longshore and Harbor Workers' Compensation Act ("LHWCA"). Under that approach, injured workers obtain a capped amount of compensation for their injuries without regard to their employers' or their own negligence. The general notions behind workers' compensation are to provide a speedy remedy for workers' injuries and death, to establish greater financial certainty for employers, and to spare both sides the protracted struggles and uncertain issues of litigation through a more streamlined dispute-resolution process.

The plain language of OCSLA § 4(b) – the provision describing OCSLA's compensation system for workers killed or injured on the job – nowhere requires the accident to have occurred on the OCS. Petitioners nevertheless advocate a situs-of-injury requirement that lacks any support in the statutory text and that has bedeviled courts in the Fifth Circuit, the only court of appeals to adopt such a test. The situs-of-injury test creates numerous practical problems as well. All OCS workers at some point need to be transported to and from the OCS, and some of their work invariably occurs on the high seas, state territorial waters, and the land of a state (because that is

where the resources extracted from the OCS need to be processed for market). The upshot of petitioners' approach is an impractical morass of geography-based difficulties: for example, a worker injured in a helicopter crash on the OCS platform receives OCSLA compensation, but does not if the crash occurs within state territorial waters or on a land-based takeoff or landing en route to or from the OCS. Because petitioners' approach is inconsistent with OCSLA's text and would create unreasonable and unworkable results based on the fortuity of geography, this Court should reject it. A better and simpler solution would look primarily to the worker's status: someone whose job substantially involves work in operations conducted on the OCS, and who is injured in the course of that work, has suffered a covered injury, even if the injury happened to occur off the OCS.

In this case, the late Juan Valladolid (whose widow brought the death-benefits claim below and is a respondent in this Court) spent 98% of his time working as a roustabout on an OCS platform. Valladolid sustained a fatal injury during an infrequent land-based task related to petitioners' offshore platform operations that he was ordered to perform. Petitioners contend that the unusual geographical location where the injury occurred means that they are required to pay respondent only at the lower workers' compensation rate for widows mandated by state law, rather than the somewhat higher amount provided by federal law. Because plain language, statutory structure, and sound policy compel rejection of a situs-based test under OCSLA § 4(b), the court of appeals' judgment should be affirmed.

STATEMENT

A. Statutory Background

1. LHWCA

The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*, is a federal workers' compensation statute designed to provide benefits to longshore workers and other land-based maritime workers. Like other workers' compensation schemes, LHWCA provides injured workers or their dependents with a no-fault system of recovery. LHWCA directs that benefits be paid regardless of whether the injuries were the worker's own fault, the employer's fault, someone else's fault, or no one's fault at all. *See* LHWCA §§ 3(a), 4(b), 33 U.S.C. §§ 903(a), 904(b) ("Compensation shall be payable irrespective of fault as a cause for the injury."); *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 485 (1992).

Prior to the enactment of LHWCA in 1927, the only federal statute allowing maritime workers or their beneficiaries to recover for work-related injuries was the Jones Act.[1] Act of June 5, 1920, ch. 250, § 33, 41 Stat. 988, 1007 (codified as amended at 46 U.S.C. § 30104 (formerly codified at 46 U.S.C. app. § 688(a) (2000))). Unlike LHWCA, the Jones Act is a negligence-based scheme that incorporates by reference the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 *et seq.*, to allow recovery only if a claimant proves that the employer's fault caused the

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[1] Under general maritime law, seamen also could recover for work-related injuries under the doctrine of maintenance and cure, which this Court long has considered to be a maritime analog to workers' compensation. *See Atlantic Sounding Co. v. Townsend*, 129 S. Ct. 2561, 2568-69 (2009); *Victory Carriers, Inc. v. Law*, 404 U.S. 202, 212 n.12 (1971).

worker's injuries. Moreover, the Jones Act covers only maritime workers who qualify as "seamen."

In *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), this Court cited the interest of promoting a "uniform[]" maritime law to hold that longshoremen injured on "navigable waters" could not recover under state workers' compensation law. *Id.* at 217. The effect of *Jensen*'s holding was that longshore workers injured on land could pursue claims under state workers' compensation law, but those injured on the seaward side of the infamous "*Jensen* line" were left without any source of workers' compensation. *See Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 216 (1969); *State Indus. Comm'n v. Nordenholt Corp.*, 259 U.S. 263, 272-73 (1922). The given rationale was that, because such workers were injured "on navigable waters," they fell within admiralty tort jurisdiction under the situs-of-injury criterion that controlled until *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 253-54, 260-61 (1972) (holding that locality-of-wrong test alone was insufficient for determining maritime jurisdiction under *The Plymouth*, 70 U.S. (3 Wall.) 20 (1866)).

Congress responded to *Jensen* by enacting LHWCA, which created a federal workers' compensation scheme to replace the state benefits cut off by *Jensen*. *See Chandris, Inc. v. Latsis*, 515 U.S. 347, 386-87 (1995) (Stevens, J., concurring in the judgment); *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 72 (1979).[2] LHWCA balances the interests of maritime

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[2] Congress attempted, on two separate occasions, to overrule *Jensen* legislatively by extending state workers' compensation to land-based workers injured on navigable waters. Act of Oct. 6, 1917, ch. 97, §§ 1-2, 40 Stat. 395, 395; Act of June 10, 1922, ch. 216, §§ 1-2, 42 Stat. 634, 634-35. This Court, however, struck

workers and their employers by granting claimants a no-fault system of speedy recovery for disability or death, while at the same time immunizing employers from negligence-based tort actions for full compensatory damages. *See* LHWCA §§ 3(a), 4(b), 5(a), 33 U.S.C. §§ 903(a), 904(b), 905(a) (providing that LHWCA benefits, if accepted, are an employee's sole remedy against his employer).

In exchange for providing greater certainty to injured workers and their decedents by lowering their burden of proof and allowing speedy recovery without regard to fault, LHWCA reduces employers' liability by limiting scheduled benefits to an amount that is "less than full damages" for the employee's injuries. *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 279 (1979) (Blackmun, J., dissenting). As a consequence, LHWCA denies covered workers the tort-based remedy available to seamen under the Jones Act. *See* LHWCA § 2(3)(G), 33 U.S.C. § 902(3)(G) (excluding seamen from LHWCA coverage); *Latsis*, 515 U.S. at 355-56 (describing Jones Act and LHWCA as "mutually exclusive compensation regimes").

As originally enacted in 1927, LHWCA did not contain any meaningful "status" requirement. The Act covered any "employee," as defined under § 2(3), and the only significant limitation included in that definition was the crew-member exclusion. *See* LHWCA ch. 509, §§ 2(3), 3(a), 44 Stat. 1424, 1425, 1426. Under LHWCA's "situs" requirement, however, the Act covered only workers injured "upon the

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down both statutes as unconstitutional delegations of congressional power to the states. *See Washington v. W.C. Dawson & Co.*, 264 U.S. 219, 225-26 (1924); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 163-64 (1920).

navigable waters of the United States (including any dry dock)." *See id.* § 3(a), 44 Stat. 1426. The result of LHWCA's original narrow situs requirement was yet more confusion and uncertainty for both employers and workers, as workers moved between state and federal coverage every time they moved between a pier and a docked ship.

This Court responded to the ensuing difficulties by recognizing "a twilight zone in which the employees must have their rights determined case by case," with "great – indeed, presumptive – weight" given "to the conclusions of the appropriate federal authorities and to the state statutes themselves." *Davis v. Department of Labor & Indus.*, 317 U.S. 249, 256 (1942). The *Davis* Court thus sanctioned an area in which either the states or the federal government could permissibly assert jurisdiction to protect injured workers' benefits. *See Calbeck v. Travelers Ins. Co.*, 370 U.S. 114, 128-29 (1962) (explaining that, under *Davis*, an award of compensation under state law or under LHWCA "in the very same circumstances would have been supportable").

In *Calbeck*, the Court held that LHWCA coverage extended to *all* injuries in the course of work on navigable waters, even as to workers within the states' valid authority. *See id.* at 126. *Cf. Industrial Comm'n v. McCartin*, 330 U.S. 622, 627-28 (1947) (workers' compensation laws' exclusive-remedy provisions should not be read to foreclose relief under other jurisdictions' workers' compensation remedies absent "unmistakable language"); *compare* LHWCA § 5(a), 33 U.S.C. § 905(a) (foreclosing other remedies against the employer "at law or in admiralty"), *with* Defense Base Act § 1(c), 42 U.S.C. § 1651(c), and Nonappropriated Funds Instrumentalities Act § 2(c),

5 U.S.C. § 8173 (each explicitly foreclosing relief under state workers' compensation laws).

In 1972, Congress amended LHWCA. *See* Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, Pub. L. No. 92-576, 86 Stat. 1251. The amendments affected LHWCA's situs requirement by expanding coverage under the Act to include injuries occurring not only "upon the navigable waters of the United States" but also on "any adjoining pier . . . or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel," LHWCA § 3(a), 33 U.S.C. § 903(a); *see Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 263 (1977). The 1972 amendments thus created concurrent jurisdiction between state and federal workers' compensation schemes for injuries to maritime employees occurring on land. *See Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 721-22 (1980). Those amendments also added a meaningful status requirement under which only persons "engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations," are eligible for LHWCA benefits. LHWCA § 2(3), 33 U.S.C. § 902(3); *see Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 423 (1985).

2. OCSLA

In 1953, Congress enacted the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.*, as part of a package of legislation (that also included the Submerged Lands Act, 43 U.S.C. § 1301 *et seq.*) to provide for federal administration of the development of OCS mineral resources. *See generally* David W. Robertson, *The Outer Continental Shelf Lands Act's Provisions on Jurisdiction, Remedies, and Choice of Law: Correcting the Fifth Circuit's Mistakes*, 38 J.

MAR. L. & COM. 487, 493-95 (2007). In so doing, Congress sought to facilitate the development and operation of the outer continental shelf ("OCS"), which Congress recognized was "vital to our national economy and security." H.R. Rep. No. 83-413, at 2 (1953), *reprinted in* 1953 U.S.C.C.A.N. 2177, 2178. OCSLA supplemented the Submerged Lands Act, under which Congress ceded to the coastal states the federal government's interests in the seabed and natural resources in state territorial waters, *see* Submerged Lands Act §§ 2(a)(2), 4, 43 U.S.C. §§ 1301(a)(2), 1312.

Section 4(a)(1) of OCSLA asserted exclusive federal jurisdiction over the "subsoil and seabed of the [OCS] and to all artificial islands and fixed structures . . . erected thereon" for mineral development. Ch. 345, 67 Stat. 462, 462 (codified at 43 U.S.C. § 1333(a)(1) (1976)).[3] Other provisions of § 4 define the substantive federal law applicable to the OCS. In OCSLA § 4(b), Congress sought to provide a uniform federal benefits scheme to workers engaged in OCS operations who sustained work-related injuries. It did so by incorporating the no-fault workers' compensation scheme contained in LHWCA, rather than the fault-based approach of FELA for rail workers or the Jones Act for seamen.

As originally enacted in 1953, OCSLA § 4 provided, in relevant part:

> (b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any opera-

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[3] Section 4(a)(1) was amended in 1978 to encompass "all installations and other devices permanently or temporarily attached to the seabed" for mineral-development purposes, rather than only "fixed" structures. 43 U.S.C. § 1333(a)(1).

> tions conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources[,] of the subsoil and seabed of the outer Continental Shelf . . . .
>
> (c) With respect to disability or death of an employee resulting from any injury occurring as the result of operations described in subsection (b), compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

OCSLA § 4(b)-(c), 67 Stat. 463.

Congress's decision to incorporate into OCSLA the no-fault workers' compensation scheme contained in LHWCA followed a path similar to other previous enactments. By 1953, Congress already had incorporated the substantive provisions of LHWCA into three other federal statutes: the District of Columbia Workmen's Compensation Act, ch. 612, 45 Stat. 600 (1928) (repealed 1979) (adopting LHWCA as the local workers' compensation statute for the District of Columbia); the Defense Base Act, ch. 357, § 1, 55 Stat. 622, 622 (1941) (codified as amended at 42 U.S.C. § 1651) (adopting LHWCA as the workers' compensation statute for persons employed at U.S. defense bases overseas); and the Nonappropriated Fund Instrumentalities Act, ch. 444, § 2, 66 Stat. 138, 139 (1952) (codified as amended at 5 U.S.C. § 8171(a)) (adopting LHWCA as the workers' compensation statute for certain civilian employees of self-supporting Armed Forces instrumentalities such as stores, theaters, and base exchanges).

Under each of those three statutes, coverage depended solely on a worker's status as a particular

type of employee, rather than on the place of the injury. The mechanisms by which Congress achieved that result, however, differed over time. In 1928 and 1941, when it passed the D.C. Workmen's Compensation Act and the Defense Base Act, Congress provided that workers qualified for benefits "irrespective of the place where the injury or death occurs." D.C. Workmen's Compensation Act § 1, 45 Stat. 600; Defense Base Act § 1, 55 Stat. 622 (same). In the Nonappropriated Fund Instrumentalities Act, however, as in OCSLA, Congress did not include that language.

State workers' compensation law evolved in parallel fashion. As of 1941, when Congress passed the Defense Base Act, at least a few states still viewed workers' compensation as a substitute for tort liability, *see* LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW § 143.02[2] (Matthew Bender, rev. ed. 2011) ("LARSON"), and therefore limited state workers' compensation coverage to injuries that occurred within the state. By 1953, however, almost every state had rejected or overruled a situs-of-injury requirement for workers' compensation benefits. *See infra* note 26.

In 1978, Congress amended OCSLA for reasons unrelated to workers' compensation. The amendments did not alter the substantive meaning of § 4. *See* H.R. Conf. Rep. No. 95-1474, at 81 (1978) ("This amendment involves no change in existing law. It was not the intent . . . to alter in any way the existing coverage of [LHWCA]."), *reprinted in* 1978 U.S.C.C.A.N. 1674, 1680; *Curtis v. Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 809 (3d Cir. 1988). The 1978 amendments, however, did alter OCSLA's structure. The original § 4(b) was moved to

§ 23(b)(1), 43 U.S.C. § 1349(b)(1), and the original § 4(c) became the current § 4(b). The wording of original § 4(c) was correspondingly revised. Rather than incorporating the original § 4(b) by reference, Congress instead used substantially the same language to describe the covered operations. As a result of the amendments, the current § 4(b) provides:

> With respect to disability or death of an employee resulting from any injury occurring *as the result of operations conducted on the outer Continental Shelf* for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshore and Harbor Workers' Compensation Act.

Id. § 1333(b) (emphasis added).

B. Factual Background

Petitioner Pacific Operators Offshore, LLP is engaged in the business of oil exploration, extraction, and sales. *See* App. 57; JA89.[4] Pacific's operations include owning and operating two offshore production platforms – the Hogan and the Houchin. *See* App. 3; JA66. Both platforms are located more than three miles off the coast of California, on the OCS. *See* App. 3.

Respondent's late husband, Juan Valladolid, worked as a "roustabout" for Pacific. *See* App. 3-4. As a roustabout, Valladolid spent approximately 98% of his time working on the Hogan. *See* App. 3; JA51.

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[4] "App. _" refers to the appendix filed with the certiorari petition, and "JA_" refers to the Joint Appendix filed with petitioners' opening merits brief.

His regular job duties on the Hogan included such tasks as washing platform decks, repairing wellhead safety equipment, assisting with piping projects, helping with crane loads going on or off the platform, painting, and picking up trash. *See* App. 3, 57.

On rare occasions – once or twice a year, *see* JA40 – Pacific would assign Valladolid to work at its onshore oil flocculation facility, referred to as La Conchita. *See* App. 3 & n.1, 57. La Conchita's primary purpose was to service Pacific's two platforms located on the OCS by taking in, separating, and storing crude oil from those platforms. *See* App. 3, 33, 57. Well fluids are pumped ashore to La Conchita via pipeline from offshore. Water is then separated from the crude oil and gas, purified (through the "flocculation" process), and either sent back to the ocean via pipeline or otherwise released. *See* JA68. The separated, or processed, crude oil is temporarily stored in tanks at La Conchita before being transported out of the plant. *See* App. 3, 57; JA68, 159-60.

On June 2, 2004, Valladolid was working for Pacific at La Conchita. *See* App. 36-37. Valladolid had been temporarily assigned to work at La Conchita for approximately four weeks (from May 5 to June 5, 2004) to assist in retrofitting a water-processing tank and to perform other assigned duties. *See* JA26. At the end of that assignment, Valladolid would have returned to his normal duties on the Hogan.

Valladolid's day-to-day duties when on temporary assignment to La Conchita varied. *See* App. 3, 57; JA37-38. In addition to performing certain maintenance and clean-up duties, Valladolid sometimes used a forklift to transport equipment and other materials on the property. *See* JA114. On several occasions, for example, Valladolid unloaded rig equipment that

Pacific had used on its offshore platforms. After unloading the rig equipment, Valladolid would use a forklift to move the equipment within the La Conchita property, where it would be stored until it was needed again on Pacific's offshore platforms. *See* JA77-79. He also sometimes used a forklift to move and consolidate scrap metal (such as pieces of chain, grating, and pipe) that had been brought ashore from the Hogan or the Houchin and dumped around the La Conchita property for ultimate disposal off-site. *See* App. 4; JA56-57.

At approximately 4:00 pm on June 2, 2004, Valladolid's supervisor at La Conchita directed him to go to the rear yard of the plant and use a forklift to "centralize" scrap metal from various locations on the property to a single location so that third-party vendors could haul it away. *See* App. 4, 58; JA38, 54. This "consolidation" process was performed roughly once every two years. *See* App. 4. While completing that process, Valladolid was crushed by the forklift. *See* App. 4, 58. At approximately 5:15 pm, Valladolid's supervisor found him lying on his back with the forklift resting on his abdomen and chest. *See* App. 37, 58. Valladolid was pronounced dead shortly thereafter from asphyxia by abdominal and chest compression. *See id.* No one witnessed the accident. *See* JA10. Accident reports later prepared by Pacific and the local Sheriff's Department stated that it "appear[ed]" that Valladolid had been crushed by the forklift after he climbed onto its raised tines to pick a piece of fruit hanging from a tree. JA14, 19. Neither report contained any conclusive finding about what Valladolid was doing just before he died. *See* JA14-15, 19; App. 37, 58.

C. Procedural Background

The day after Valladolid's death, Pacific submitted a claim on respondent's behalf for death benefits under the California Workers' Compensation Act, Cal. Lab. Code § 3600 *et seq.*, and began paying benefits to Luisa Valladolid. Over the course of the following 52 weeks, petitioners paid a total of $42,000.[5] For a dependent to receive benefits under California's workers' compensation scheme, the injury or death for which the dependent seeks benefits must have occurred while the employee was "performing service growing out of and incidental to his or her employment" and was "acting within the course of his or her employment." *Id.* § 3600(a)(2).

Mrs. Valladolid subsequently filed a claim for federal workers' compensation benefits under LHWCA, claiming she was entitled to benefits either directly under LHWCA or indirectly through OCSLA § 4(b), which incorporates LHWCA by reference. *See* App. 54. A surviving spouse eligible for benefits under LHWCA is generally entitled to 50% of the decedent's average weekly wage until the surviving spouse dies or remarries. *See* LHWCA § 9(b), 33 U.S.C. § 909(b). Under LHWCA's "offsetting" provision – designed to prevent double recoveries – any benefits paid to respondent under LHWCA would be reduced by the amounts already paid to her under any other workers' compensation scheme. *See id.* § 3(e), 33 U.S.C. § 903(e).[6] Thus, should respondent ultimately

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[5] Petitioners paid Valladolid's widow $807.69 per week for 52 weeks. *See* App. 37 n.2, 54 n.2.

[6] LHWCA § 3(e) provides:

> Notwithstanding any other provision of law, any amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under this [Act] pur-

succeed in obtaining LHWCA benefits (via OCSLA § 4(b)), she would be entitled to $24,216 per year, offset by all payments that petitioners previously made to her under the California statute.[7]

Petitioners challenged respondent's claim, arguing that Valladolid was not covered under LHWCA directly or through OCSLA's incorporation of the LHWCA benefits scheme. In particular, they argued that Valladolid was not indirectly covered under OCSLA § 4(b) because his injuries did not occur "*on the OCS*," *see* JA145.[8] That is the sole issue before this Court. The direct application of LHWCA to respondent is not at issue.

1. Administrative Proceedings

The administrative law judge ("ALJ") granted petitioners' motion for summary judgment, holding that respondent could not establish indirect coverage under OCSLA.[9] *See* App. 74, 93. The ALJ concluded that "[t]here is no dispute" that Valladolid satisfied the OCSLA § 4 status requirement because he was working to develop the mineral wealth of the OCS when he was injured. App. 87-88. But the ALJ also concluded that § 4(b) applies only to injuries that

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suant to any other workers' compensation law or [the Jones Act] shall be credited against any liability imposed by this [Act].

33 U.S.C. § 903(e).

[7] *See supra* p. 14 & n.5.

[8] Petitioners argued that LHWCA did not directly cover Valladolid because he had not been engaged in "maritime employment" at the time he was injured and because his injuries had not occurred "upon the navigable waters of the United States" or in any "adjoining area." *See* JA123-24.

[9] The ALJ also held that respondent could not establish coverage under LHWCA directly. *See* App. 74, 93.

occur *on* the OCS. *See* App. 92-93. To reach that conclusion, the ALJ incorporated into § 4(b) the narrow "situs-of-injury" requirement that a divided Fifth Circuit had articulated in *Mills v. Director, OWCP*, 877 F.2d 356 (5th Cir. 1989) (en banc).[10] *See* App. 91-92; *see also infra* pp. 30-31. Because it was undisputed that Valladolid was killed "at an onshore facility that served offshore oil platforms," and not *on* the OCS, the ALJ concluded that respondent was not entitled to benefits under § 4(b). *See* App. 92-93.

The U.S. Department of Labor's Benefits Review Board ("BRB") affirmed. *See* App. 51-52. Like the ALJ, the BRB concluded that OCSLA § 4(b) contains a "situs-of-injury" requirement and that, because Valladolid's injuries did not occur while he was working "*on* the OCS," respondent could not recover under the statute. App. 51 (emphasis added).[11]

2. The Decision Below

On appeal, the Ninth Circuit reversed the BRB's holding that OCSLA § 4(b) includes a "situs-of-injury" requirement. *See* App. 13-19.[12] The court

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[10] The en banc decision in *Mills* overruled a line of earlier Fifth Circuit cases. *See, e.g., Nations v. Morris*, 483 F.2d 577, 584 (5th Cir. 1973) ("OCSLA, in its incorporation of [LHWCA], did not speak in terms of injuries occurring *on* such platforms so as to distinguish them from those *off* the platforms. . . . Congress purposefully established a system that would apply without regard to physical location.").

[11] The BRB also affirmed the ALJ's denial of benefits under LHWCA directly. *See* App. 51-52.

[12] The court affirmed the BRB's decision that respondent could not qualify for death benefits directly under LHWCA because Valladolid's injury did not occur "upon the navigable waters of the United States" or in any "adjoining area." *See* App. 30-34.

first acknowledged that two other courts of appeals had squarely addressed whether § 4(b) contains a situs-of-injury requirement. *See* App. 6-13. The Third Circuit, in *Curtis v. Schlumberger Offshore Service, Inc.*, had rejected any situs-of-injury test under § 4(b), *see* 849 F.2d at 809-11, whereas the Fifth Circuit, in *Mills*, had adopted a situs-of-injury requirement under which a claimant must show that his injury occurred on an OCS platform or on the waters above the OCS, *see* 877 F.2d at 362. *See* App. 7.

The Ninth Circuit also analyzed this Court's case law, but found no "clear precedent." App. 8-13. Although in *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986), this Court referred in a footnote to the "OCSLA situs requirement," *id.* at 219 n.2, the court of appeals concluded that *Tallentire* was "simply not on point." App. 9. The court below understood *Tallentire* to address "whether a choice-of-law provision in OCSLA, [§ 4(a)(2)(A)], applied so as to allow the widows of employees killed in a helicopter crash to pursue a wrongful death action under state law." App. 8. But because *Tallentire* did not "'involve a suit by an injured employee against his employer pursuant to [§ 4(b)], this provision ha[d] no bearing on'" this Court's decision in that case. App. 8-9 (quoting *Tallentire*, 477 U.S. at 219 n.2).

Finding no clear precedent, the Ninth Circuit concluded that it was faced with "a straightforward question of statutory construction." App. 13. The court decided that § 4(b)'s plain language is "unambiguous in not including a situs-of-injury requirement." App. 18. First, the court rejected petitioners' argument that the text of § 4(b) itself contains a situs-of-injury requirement, *see* App. 13-

16, concluding that § 4(b)'s plain language provides benefits broadly to "'any injury occurring *as the result of* operations conducted on the [OCS],'" App. 15 (quoting § 4(b)). Second, the court rejected the argument that § 4's other subsections – each of which includes an explicit situs requirement – indicate that Congress intended a situs-of-injury requirement for § 4(b). *See* App. 16-17. The court reasoned instead that Congress's deliberate decision *not* to write a situs-of-injury requirement into § 4(b) indicates that Congress did *not* intend for § 4(b) to include that requirement. *See* App. 17. Third, the court rejected petitioners' argument that § 4(a)'s situs requirement applies to *all* of § 4, concluding that nothing in the language of § 4(a), or the rest of § 4, supported petitioners' position. *See* App. 24-27.

The Ninth Circuit further concluded that § 4's legislative history "is inconclusive on the situs issue" and "certainly [contained] nothing clear enough to persuade [the court] that [its] reading of the statute [was] incorrect." App. 22. Finally, the court briefly addressed various policy considerations but found nothing that would "compel the addition of a situs-of-injury requirement" to § 4(b). App. 23-24.

Having concluded that § 4(b) does not contain a situs-of-injury requirement, the court of appeals then adopted a "substantial nexus" test, under which – to satisfy § 4(b)'s requirement that an injury must be "the result of operations conducted on" the OCS – a claimant must show that the work performed "directly furthers [OCS] operations and is in the regular course of such operations." App. 28. The court did not address whether Valladolid satisfied its test, instead remanding the issue to the BRB for further proceedings. *See* App. 30.

SUMMARY OF ARGUMENT

I.A. The plain language of OCSLA § 4(b) contains no requirement that an injury, to be covered, must occur on the OCS itself. Section 4(b) covers injuries that occur "as the result of operations conducted on" the OCS. By its ordinary meaning, that language requires that those injuries be causally connected with those operations, but it does not require that they happen in the same place. Simply reading the statute is enough to dispose of the question presented here. This conclusion is reinforced by the structure of OCSLA § 4 as a whole, which contains several other carefully crafted provisions that apply only to events that occur in specific (and different) geographical areas. Accordingly, this is a case "[w]here Congress [has] include[d] particular language in one section of a statute but omit[ted] it in another section of the same Act," and this Court should "presume[] that Congress act[ed] intentionally and purposely" in doing so. *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal quotation marks omitted).

B. Any inclination by this Court to create a situs-of-injury requirement for § 4(b) would present significant difficulties in determining what that situs should be. Because the statutory text contains no situs requirement, petitioners are left to offer a range of inconsistent standards drawn from statutory language that does not apply to the employer-employee situation expressly covered by § 4(b). Petitioners variously refer to "offshore areas" (at 15), the "shelf" (at 15, 16), and "offshore" (at 16, 17, 29), among others, which provide no guidance at all. The effect of adopting petitioners' approach would be to ensnare courts in a morass of inconsistent standards under which workers injured in commonly occurring accidents would receive or be denied coverage based on where

the accident occurred. Indeed, the Fifth Circuit's cases applying the situs-of-injury requirement of *Mills v. Director, OWCP*, 877 F.2d 356 (5th Cir. 1989) (en banc), demonstrate the confusion that has arisen from that court's departure from the statutory text.

C. Neither *Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985), nor *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986), decided the question presented here. *Herb's Welding* concerned the direct application of LHWCA, not its incorporation through OCSLA § 4(b). Indeed, this Court expressly reserved the question whether OCSLA § 4(b) would apply on the facts of *Herb's Welding*. *Tallentire* addressed the applicability to a wrongful death action of the OCSLA provision (§ 4(a)(2)(A)) that specifies when state law may apply as surrogate federal law. Petitioners rely heavily on a single footnote in which the *Tallentire* Court discussed § 4(b), but this Court nowhere said that § 4(b) contains the kind of situs-of-injury requirement that petitioners now urge. In any event, in that footnote itself the Court stated that § 4(b) "has no bearing on this case." 477 U.S. at 219 n.2.

II.A. Petitioners' arguments in favor of a situs-of-injury requirement fail to overcome the statutory text. They contend that an injury that is "the result of operations conducted on" the OCS necessarily must itself occur "on" the OCS, but their textual arguments rest ultimately on bare and unpersuasive assertions that are not consistent with the ordinary meaning of the language that Congress used. They also contend that Congress used the phrase "as the result of" to deal with latent injuries, but are unable to show either that latent injuries were a real concern for the drafters of the statute or that the language Congress chose would have been a natural

way to deal with such a concern while maintaining a situs-of-injury requirement.

B. Petitioners argue that a situs-of-injury requirement is necessary to give effect to Congress's intent that OCSLA § 4(b) only fill gaps in workers' compensation coverage under state law. But they give no reason to believe that Congress had such a limited view of OCSLA's function, and indeed the drafting history shows the contrary: the Senate committee that proposed § 4(b) *rejected* an amendment that would have restricted coverage to situations in which there was a gap to fill. Further, the legislative history also shows that Congress wanted more broadly to encourage economic development on the OCS. Covering workers such as Valladolid – who was injured on land despite working almost entirely on the OCS advancing OCS operations – makes sense in light of that broader purpose.

C. Petitioners also argue that their situs-of-injury requirement has the administrative virtues of a bright-line rule and that it would prevent employers from having to buy duplicative workers' compensation insurance coverage under both LHWCA and state law. To the contrary, there is no reason to think that the line petitioners propose to draw would be easily administrable. Both the Fifth Circuit's experience with *Mills* and this Court's long and unpleasant experience with the "*Jensen* line" counsel a different course.

Further, any double-insurance problem for employers is readily manageable. Employers must obtain insurance under both state-law and OCSLA compensation schemes because of the uncertain and varied locations where workers are injured, but multi-

jurisdictional insurance covering state workers' compensation and OCSLA is routine and unproblematic.

If duplicative insurance were a serious concern, the need for double insurance would be greater under petitioners' situs-of-injury test. That test would ensure that every OCS worker regularly faces a risk of injuries that would be covered by state law and those that would be covered by OCSLA. Under a status test, most OCS workers' injuries would be covered by the federal scheme.

In any event, petitioners' situs-of-injury approach would raise a real and practical duplicative-insurance problem that does not arise under the status test. Under petitioners' approach, OCS workers could lose both federal and state workers' compensation for injuries on the high seas. As a result, employers would be exposed to tort suits and therefore would need to obtain liability insurance coverage as well as workers' compensation coverage.

III. In applying OCSLA § 4(b), this Court should adopt a test that focuses on the need for a causal connection between operations conducted on the OCS and a covered injury. Consistent with general principles of workers' compensation law, that causal inquiry generally should focus on the nature of the injured worker's employment. Individuals who work primarily on the OCS should be covered, wherever they may be injured, because the close connection between their employment and OCS-based operations itself supplies the requisite causal link. By contrast, individuals who do *not* work primarily on the OCS should not be covered because any link between OCS-based operations and a work-related injury they might suffer would be attenuated and remote.

ARGUMENT

I. OCSLA § 4(b) DOES NOT INCLUDE A SITUS-OF-INJURY REQUIREMENT

A. OSCLA's Text And Structure Show That § 4(b) Contains No Situs-Of-Injury Requirement

1. The "cardinal canon" of statutory interpretation is that "a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Statutory interpretation thus "begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). If that "language provides a clear answer, [interpretation] ends there as well." *Harris Trust & Sav. Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238, 254 (2000) (internal quotation marks omitted). This is such a case.

The parties dispute whether a worker's injury may fall within the scope of OCSLA § 4(b) (and therefore of LHWCA) when the worker was not physically located on the OCS at the time the relevant injury occurred. Section 4(b)'s plain language answers that question. The "disability or death of an employee" falls within the scope of § 4(b) if it "result[s] from any injury occurring as the result of operations conducted on the [OCS] for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources . . . of the subsoil and seabed of the [OCS]." 43 U.S.C. § 1333(b). The ordinary, natural meaning of the word "result" encompasses occurrences that are linked by a chain of cause and effect but do not necessarily happen in the same physical

location.[13] Section 4(b) thus covers at least some deaths and disabilities even though the injuries do not themselves occur on the OCS.

To limit § 4(b)'s coverage to injuries "occurring . . . on the [OCS]" would require a rewriting of the statute by eliding the words "as the result of operations conducted." *See Inhabitants of Montclair Twp. v. Ramsdell*, 107 U.S. 147, 152 (1883) ("It is the duty of the court to give effect, if possible, to every clause and word of a statute . . . ."); *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (same). The textual surgery would be even more radical in light of the extensive clauses that follow, which enumerate the particular types of operations – exploration, development, removal, and transport – from which a covered injury must result. One cannot read § 4(b) as silently creating a requirement as to *where* an injury must take place without somehow explaining why Congress chose to write an extensive and careful description of *why* and *to whom* the injury must occur.

2. The ordinary meaning of the term "result" in the phrase "occurring as the result of" is confirmed by *Brown v. Gardner*, 513 U.S. 115 (1994). In that case, this Court construed a statute providing compensation for "'an injury[,] or an aggravation of an injury,' that occurs 'as the result of hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation' provided under any of the laws administered by" the Veterans Administration ("VA"). *Id.* at 116 (quoting 38 U.S.C. § 1151 (1994)). The government had contended that the phrase "as the result of" in § 1151 "signifie[d]

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[13] *See, e.g., Webster's New International Dictionary* 2126 (2d ed. 1952) (defining "result" to include a "consequence, effect, issue, or conclusion").

a proximate cause requirement that incorporate[d] a fault test." *Id.* at 119. This Court found that argument "implausible," reasoning that the phrase "as the result of" was instead "naturally read simply to impose the requirement of a causal connection" between an injury and the VA's treatment, without "requiring a demonstration of fault." *Id.*

The situs-of-injury requirement that petitioners would read into the "as the result of" language of § 4(b) is even more foreign to that language than the fault requirement that this Court found unpersuasive in the same language of the VA statute (38 U.S.C. § 1151 (1994)) in *Brown*. Whereas in *Brown* the Court rejected adding a fault requirement to the phrase "as the result of," here petitioners seek to restrict the geographical scope of the applicable occurrences. But the phrase "as the result of" conveys no such geographical description or restriction. In both cases, the ordinary meaning of the term gives rise to a "clear textually grounded conclusion" that ought to be "the end of the matter." 513 U.S. at 120 (internal quotation marks omitted).

3. The reading of § 4(b) as lacking a situs-of-injury requirement is "fortified" by a comparison to the surrounding structure of the statute. *See Russello v. United States*, 464 U.S. 16, 22 (1983). Several neighboring provisions apply only to certain geographical areas, and Congress imposed those geographical limitations using the words one would expect. This Court has recognized that, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Id.* at 23 (internal quotation

marks omitted); *see also, e.g.*, *Kucana v. Holder*, 130 S. Ct. 827, 838 (2010) (same); *Brown*, 513 U.S. at 120 (same). In OCSLA § 4, Congress imposed explicit and varying geographic limitations on the application of five out of six subsections, omitting such a limitation in only one subsection – § 4(b). *Russello*'s teaching thus applies with great force.

Section 4(a)(1) extends federal law "to the subsoil and seabed of the [OCS] and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed" for purposes of exploiting OCS resources.

Section 4(a)(2)(A) specifies when the law of each adjacent state may be adopted as surrogate federal law, but not in as many places as § 4(a)(1). The subsoil, seabed, and artificial islands are still covered, but § 4(a)(1)'s "installations and other devices permanently or temporarily attached to the seabed" are omitted in favor of "fixed structures."[14]

Sections 4(c), (d), and (e) extend the National Labor Relations Act, certain authority of the Coast Guard, and certain authority of the Secretary of the Army to the artificial islands, installations, and other devices mentioned in § 4(a)(1), but not the subsoil and seabed. In addition, § 4(d)(1) alone includes "the waters adjacent" to the artificial islands, installations, and other devices – the others do not. And § 4(f) preserves the application of other laws, referring to "the subsoil and seabed of the [OCS] and the artificial

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[14] As a leading admiralty scholar has explained, the zone of coverage under § 4(a)(2)(A) is narrower than that under § 4(a)(1) because § 4(a)(2)(A) excludes a "'temporarily attached' apparatus." Robertson, 38 J. MAR. L. & COM. at 527-28.

islands, installations, and other devices referred to in subsection (a)."[15]

Thus, § 4 establishes four different explicit geographical requirements in five of its six subsections, but *not* in § 4(b). The care with which Congress fine-tuned the scopes of those different provisions reinforces the presumption that it "act[ed] intentionally and purposely" by including them – and with just as much intent and purpose when it "exclu[ded]" any such requirement from § 4(b). *Russello*, 464 U.S. at 23 (internal quotation marks omitted).

4. A fair reading of the statutory language encompasses injuries of the type readily foreseeable when Congress chose in § 4(b) to limit injuries compensable through the workers' compensation scheme to those occurring as the result of operations conducted on the OCS. One such example is a helicopter crash in the course of transporting workers to or from the OCS.[16] Crashes of that type may occur when the helicopter is over the high seas, the territorial waters of a state, or dry land. In none of these situations is the helicopter "on" the OCS. Never-

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[15] Petitioners contend that § 4(f) "makes clear that the entirety of [§ 4], including [§ 4(b)], is intended to extend federal law generally, and certain federal laws in particular, to the [OCS]," and that it creates "no suggestion that one subsection [*i.e.*, § 4(b)] goes much further." Pet. Br. 25. But § 4(f) includes an express definition of its geographical limitations, whereas § 4(b) has no such limitation. That contrast creates just the suggestion that petitioners deny. *See supra* pp. 26-27.

[16] This is a real and recurring fact pattern. Helicopters are hazardous enough to cause frequent injuries and yet are often necessary to reach the OCS on an urgent basis. *See, e.g., Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Barger v. Petroleum Helicopters, Inc.*, 692 F.2d 337 (5th Cir. 1982); *Stansbury v. Sikorski Aircraft*, 681 F.2d 948 (5th Cir. 1982).

theless, in all of them (under any fair reading of this statute), an injury to employees on board the helicopter would be "the result of" operations conducted on the OCS. The same would be true for maritime mishaps when transporting crew or supplies to or from an OCS platform.

Another example would be an injury in the course of disaster response or environmental remediation operations after an oil spill, explosion, or similar catastrophe. As the 2010 Gulf of Mexico oil spill demonstrates, response and clean-up efforts can be massive exercises that involve the deployment of a workforce not merely on the OCS itself, but throughout the entire affected area. A worker who generally works on the OCS might be injured on the OCS, on land, on a state's territorial water, or on the high seas while participating in a clean-up effort. Nothing in the statute prevents that worker from recovering compensation for that injury.

This case presents a third example. Valladolid spent 98% of his time on the OCS: he would never have been in his job, doing the work he was ordered to perform, if he had not been hired to participate in operations conducted on the OCS. The day he was injured, moreover, his assigned task was to pick up scrap metal generated by petitioners' operations on its OCS platforms. JA54-56.[17] Thus, the task itself was also tied directly to operations conducted on the OCS. The words that Congress used to define eligibility for benefits under § 4(b) – "death . . . resulting

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[17] *Cf. Tallentire*, 477 U.S. at 219 (reading *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969), and *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981), as presuming applicability of OCSLA because "the fatalities were intimately connected with the decedents' work on the platforms").

from any injury occurring as the result of operations conducted on the [OCS]" – therefore apply to these facts.

B. OCSLA Provides No Guidance About *Which* Situs Requirement Would Apply

Even if this Court was inclined to devise a situs-of-injury requirement for § 4(b), it nevertheless would encounter a major obstacle: nothing in OCSLA, nothing in petitioners' brief, and (especially) nothing in the Fifth Circuit's tangled and contradictory line of cases following *Mills v. Director, OWCP*, 877 F.2d 356 (5th Cir. 1989) (en banc), offers a clear picture of what the situs requirement for § 4(b) should be. On the contrary, there are many different candidates, with no apparent principled basis for choosing among them. That is another good reason to interpret OCSLA according to its plain text rather than attempting to insert a requirement not expressly provided by Congress.

1. Petitioners are adamant that OCSLA § 4(b) imposes a situs-of-injury requirement, but they have not defined the relevant situs. When describing their test, they refer vaguely to "offshore areas" (at 15), "the shelf" (at 15, 16), "offshore" (at 16, 17, 29), "the outer continental shelf" (at 17, 19, 22, 23, 24, 25, 26, 30, 32, 33), "[OCS] structures" (at 24, 25), and "the offshore continental shelf" (at 29). When Congress imposed the sort of situs requirement that petitioners advocate, it defined the situs quite precisely. Indeed, § 4's other subsections each adopt detailed – and different – situs definitions. *See supra* pp. 25-27.

Petitioners' sole effort to rely on statutory language for a "situs" definition suggests (at 24-25) that § 4(b)'s situs-of-injury requirement should correspond to the "neighboring" situs requirements in § 4(a) and

§ 4(c). But § 4(a) adopts somewhat different situs definitions in § 4(a)(1) and § 4(a)(2)(A), while § 4(c) adopts yet a third definition. *See supra* p. 26. None of those definitions, moreover, would include "the waters above the OCS," *Mills*, 877 F.2d at 362, on or over which OCS workers regularly must travel as part of their jobs.

Without a clear definition of the governing situs, petitioners' requirement would create enormous difficulties that the lower courts would need to resolve. If Valladolid had been injured on a crew boat as it approached or left the platform (a typical injury for an OCS worker), would he have been entitled to OCSLA compensation? He would have been "offshore" (*cf.* Pet. Br. 16, 17, 29), but he would not have been on "the shelf" (*cf. id.* at 15, 16). He would have been on the situs defined by § 4(d)(1) and within the scope of § 23(b)(1), but not on the situs defined by § 4(a)(1) or § 4(a)(2)(A). Petitioners' proposed rule offers no answer grounded in OCSLA's actual text.

2. Similarly, no answer to these questions can be found in the Fifth Circuit's cases trying to apply a situs-of-injury requirement under OCSLA. On the contrary, the lesson to be drawn from that unfortunate experience is that petitioners' proposed rule would complicate rather than clarify the operation of § 4(b).

In *Mills*, the en banc court departed from previous Fifth Circuit precedent to create the situs-of-injury requirement that petitioners advocate here.[18] The

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[18] For an example of that pre-*Mills* precedent, see *Nations v. Morris*, 483 F.2d 577 (5th Cir. 1973), which explained that the OCSLA workers' compensation provision of § 4(b) "appl[ies] without regard to physical location" of injury. *Id.* at 584. *See also supra* note 10.

Fifth Circuit's efforts to apply that requirement have created only confusion and uncertainty. *Mills* itself declared that § 4(b) extended coverage only to workers injured "on an OCS platform or the waters above the OCS," 877 F.2d at 362, even though the term "platform" never appears in § 4,[19] and none of the several situs definitions in § 4 includes "the waters above the OCS" (except to the limited extent that § 4(d)(1) includes "the waters adjacent" to artificial islands, installations, and other devices).[20]

In *Demette v. Falcon Drilling Co.*, 280 F.3d 492 (5th Cir. 2002), *overruled in part by Grand Isle Shipyard, Inc. v. Seacor Marine, LLC*, 589 F.3d 778, 788 n.8 (5th Cir. 2009) (en banc), the court "parsed the precise language of [amended § 4(a)(1)] to specify the exact contours of the situs test," 280 F.3d at 496, ultimately devising a list of covered locations.[21] Its list did not include "the waters above the OCS," which the *Mills* court had said were covered by its situs requirement for the application of § 4(b).

In *Diamond Offshore Co. v. A&B Builders, Inc.*, 302 F.3d 531 (5th Cir. 2002), *overruled in part by Grand Isle Shipyard*, 589 F.3d at 788 n.8, the court

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[19] OCS platforms are generally covered by more detailed definitions in § 4(a)(1) and § 4(a)(2)(A). Not every "platform" necessarily satisfies those more detailed definitions.

[20] Indeed, this Court's decision in *Tallentire*, 477 U.S. at 217-20, establishes that § 4(a)(2)(A) at least does *not* cover "the waters above" the OCS. *See infra* pp. 35-37 (discussing *Tallentire*).

[21] *Demette*'s list included the subsoil and seabed of the OCS and some, but not all, "artificial island[s], installation[s], [and] other device[s]," depending on the purposes for which they were present on the OCS and on other factors as well. 280 F.3d at 497.

applied *Demette* to reach the remarkable conclusion that a welder injured during OCS operations "more than 100 miles offshore in the Gulf of Mexico," 302 F.3d at 537, was not eligible for benefits under § 4(b) unless the semi-submersible drilling rig on which he worked "was 'attached' to and 'erected' on the seabed of the OCS," *id.* at 544. Contrary to the analysis in *Mills* – but not acknowledging the conflict – the *Diamond Offshore* court reasoned that "the OCSLA situs test is not satisfied merely because [the worker's] alleged injury occurred on the navigable waters overlying the OCS." *Id.* at 543.

Most recently, in *Becker v. Tidewater, Inc.*, 586 F.3d 358 (5th Cir. 2009), the Fifth Circuit held that "all employees suffering injury or death on the [OCS] are covered [under OCSLA § 4(b)] if they are engaged in exploring for or developing natural resources." *Id.* at 366. That panel then challenged *Demette* in a footnote:

> Although we are persuaded that the above analysis is the correct approach in determining whether a worker injured on the [OCS] is covered by the LHWCA, we recognize that some of our cases have suggested that more is required to satisfy the situs requirement.

Id. at 367 n.6 (citing *Demette*, 280 F.3d at 498-500).

The Fifth Circuit's inconsistent approaches in *Mills*, *Demette*, *Diamond Offshore*, and *Becker* – which also have drawn critical attention from scholars and practitioners[22] – is not surprising. Because OCSLA § 4(b)

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[22] *See, e.g.*, Robertson, 38 J. MAR. L. & COM. at 539 (describing *Diamond Offshore* as applying a "rule [that] seems to exemplify instability"); Julia M. Adams & Karen K. Milhollin, *Indemnity on the Outer Continental Shelf – A Practical Primer*, 27 TUL. MAR. L.J. 43, 57-58, 70, 100 (2002) (listing *Demette* and

itself contains no situs-of-injury requirement, the *Mills* and *Demette* courts necessarily made up their (inconsistent) definitions for § 4(b)'s situs requirement out of whole cloth. Nothing in the Fifth Circuit's experience trying to administer an actual situs requirement commends itself to this Court.

C. Neither *Herb's Welding* Nor *Tallentire* Leads To The Conclusion That § 4(b) Contains A Situs-Of-Injury Requirement

This Court never has decided whether OCSLA § 4(b) contains a situs-of-injury requirement. On the one previous occasion when the question was presented, the Court expressly declined to resolve it. The decision here should be based on the governing statute and sound principles of statutory interpretation, rather than on ambiguous *dicta* in previous cases construing unrelated provisions of OCSLA.

1. Petitioners invoke *Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985), but that reliance is misplaced. In that case, a welder (Gray) was injured while working on a fixed platform erected on the seabed within state territory. *See id.* at 416-17. Gray spent most of his time on platforms in Louisiana waters, but some of his time on OCS platforms. He was injured on a platform in Louisiana waters. *See id.* The BRB held that Gray was entitled to LHWCA benefits under OCSLA § 4(b): even though he was not on the OCS at the time he was injured, the BRB considered his work "'integrally related'" to OCS operations. *Id.* at 417-18. The Fifth Circuit affirmed on different grounds: it held that Gray had

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Diamond Offshore among a series of Fifth Circuit OCSLA decisions that tend to leave a lawyer's "office aspirin bottle . . . empty"). *See also* Opp. 12 n.6 (collecting authorities criticizing *Mills*).

been engaged in maritime employment at the time of his injury and therefore qualified for benefits directly under LHWCA, without any need to invoke § 4(b). *See id.* at 418-19.

This Court reversed. It held, contrary to the Fifth Circuit's view, that LHWCA did not apply directly because work on artificial islands is not "maritime employment" within the LHWCA status requirement. As a "land"-based welder on a fixed platform, Gray was not engaged in maritime employment. *See id.* at 421-26. Relying on § 4(b), Gray sought to defend the judgment on the BRB's original grounds. But this Court refused to reach the § 4(b) issue because it had "not been fully briefed and argued here and was not discussed by the Court of Appeals." *Id.* at 426 n.12. It explicitly left the issue "open to the Court of Appeals on remand." *Id.*

Petitioners argue (at 29) that *Herb's Welding* supports them. They rely upon its statement that OCSLA contains an "explicit geographic limitation," 470 U.S. at 427, as endorsing their view that OCSLA contains a situs-of-injury requirement. But, if that had been the Court's meaning, the § 4(b) issue would not have been "open to the Court of Appeals on remand" – that question already would have been decided, because there was no dispute that Gray was not injured on the OCS.

In context, the limitation to which the *Herb's Welding* Court referred was not a situs-of-injury requirement, but a *situs-of-operations* requirement. Because Gray's job involved going back and forth between state-water and OCS platforms, it was necessary in his case to distinguish between an injury that occurred as a result of extractive operations conducted in Louisiana waters and one that occurred as a result

of operations conducted on the OCS. The explosion there occurred due to gas lines from a fixed platform within state territorial waters, and not from OCS platform operations. That is the "explicit geographical limitation" to which the Court referred. 470 U.S. at 427. But that limitation is not relevant to this case, in which no one disputes that the only relevant extractive operations were conducted on the OCS.

2. Just over a year after *Herb's Welding*, this Court, in *Tallentire*, addressed the relationship between OCSLA, state law, and the Death on the High Seas Act ("DOHSA") (now codified at 46 U.S.C. § 30301 *et seq.*). *Tallentire* involved a tort claim by the surviving widows of two OCS workers who were killed when the helicopter transporting them from their platform to the shore crashed 35 miles off the Louisiana coast. The question was whether the widows had tort claims against the operator of the helicopter under state-law remedies arguably incorporated into federal law through OCSLA § 4(a)(2), or whether DOHSA instead applied. *See* 477 U.S. at 209.

This Court held that DOHSA governed. It rejected the widows' arguments that OCSLA § 4(a)(2)(A) incorporated state law in that context as surrogate federal law, which would have saved their claims. The *Tallentire* Court reasoned that the helicopter crash happened on the high seas, outside the geographical coverage of § 4(a)(2)(A). *See id.* at 219-20. In the course of interpreting § 4(a)(2)(A), the Court included a footnote comparing the scope of application of § 4(a)(2)(A) to that of § 4(b). That footnote read:

> Only one provision of OCSLA superimposes a status requirement on the otherwise determinative OCSLA situs requirement; [§ 4(b)] makes

> compensation for the death or injury of an "employee" resulting from certain operations on the [OCS] payable under [LHWCA]. We note that because this case does not involve a suit by an injured employee against his employer pursuant to [§ 4(b)], this provision has no bearing on this case.

Id. at 219 n.2.

Petitioners argue at length (at 28-29) that this Court's statement that § 4(b) "superimposes" a status requirement on a situs requirement supports their position that § 4(b) contains a situs-of-injury requirement. That argument has no merit, for two reasons. *First*, the *Tallentire* footnote does not address the question presented here. As the discussion above of *Herb's Welding* demonstrates, § 4(b) undisputedly contains a "situs requirement": the provision does not apply unless the relevant extractive operations were conducted "on" the OCS. But the question presented here is whether § 4(b) contains a situs-of-injury requirement, which is a very different thing. *Tallentire* sheds no light on that question.

Indeed, it would have been very odd if the *Tallentire* Court had undertaken to decide the situs-of-injury question presented here. The *Herb's Welding* Court carefully reserved that same question – even when directly presented – as one that deserved full briefing and argument. *See supra* p. 34. It is thus unlikely that the *Tallentire* Court would have chosen to resolve the issue in an ambiguous footnote only one year later, without briefing or argument, when the facts did not present the issue.

Second, the Ninth Circuit was unquestionably correct when it categorized the *Tallentire* footnote as *dictum* with no binding force. *See* App. 9-10. When

this Court says that an issue "has no bearing on [a] case," it is not making law. "It is extremely dangerous to take general *dicta* upon supposed cases not considered in all their bearings, and, at best, inexplicitly stated as establishing important law principles." *Alexander v. Baltimore Ins. Co.*, 8 U.S. (4 Cranch) 370, 379 (1808) (Marshall, C.J.). The Court can and should focus instead on the statutory language that actually controls this case.

II. PETITIONERS' ARGUMENTS IN SUPPORT OF A SITUS-OF-INJURY REQUIREMENT ARE UNPERSUASIVE

Petitioners advocate a *per se* rule whereby no injury is deemed to "occur[] as the result of operations conducted on the [OCS]" unless that injury occurs "on" the OCS. *E.g.*, Pet. Br. 26. They urge this Court to reject the situs-of-*operations* construction adopted below, *see* App. 15, in favor of a strict situs-of-*injury* requirement under which no OCS worker may recover § 4(b) compensation for work-related injuries that occur off the OCS, regardless of their cause. Petitioners' arguments lack merit.

A. Petitioners' Textual Arguments That § 4(b) Imposes A Situs-Of-Injury Requirement Have No Merit

Petitioners assert (*e.g.*, Pet. Br. 14-15) that § 4(b)'s plain language imposes a situs-of-injury requirement. The nub of their textual argument is this: "An injury is not 'the result of operations conducted on the [OCS]' unless it was caused by something that *happened* on the [OCS]. Thus, the injury must occur on the [OCS] to come within the statutory text." *Id.* at 15. The first sentence is correct, but trivial. Certainly, any injury that is the result of operations on the OCS is caused by something that happened on

the OCS. Specifically, it is caused by the relevant "operations," which happened on the OCS because they were "conducted" there. The second sentence, however, is a *non sequitur*. Petitioners simply assert that the injury necessarily must happen in the same place as its cause. But that is not so, as, for example, coastal residents hundreds of miles from the OCS site of the 2010 Gulf of Mexico oil disaster are particularly aware. *See supra* p. 28.

Petitioners further speculate (at 16) that Congress "likely used the phrase 'injury occurring as a result of operations conducted'" to ensure coverage for "latent injuries" rather than to convey the obvious meaning that the words suggest. Petitioners cite two state cases that they claim otherwise might have prevented recoveries for latent injuries, but offer no evidence that Congress used any particular specific language to encompass OCS latent injuries.[23] Further, even if there were some actual reason to think that Congress was motivated by this particular concern, "[t]he best evidence of [a law's] purpose is the statutory text adopted by both Houses of Congress and submitted to the President." *West Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98 (1991). Where that text is "clear," as it is here, this Court will not "ignore . . .

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[23] Petitioners cite no example of any reported case under § 4(b) involving a latent injury, in which the disease or injury occurs well outside the immediate period or incident at the job site. In any event, it has been so well-settled that latent injuries are compensable under LHWCA itself that in only a single case has such coverage even been challenged, and that challenge was readily rejected. *See Andras v. Donovan*, 414 F.2d 241, 243 (5th Cir. 1969) (per curiam) (collecting authorities). Thus, it seems especially doubtful that Congress used such ambiguous and unspecific language to accomplish a goal already achieved in the statute.

[it] in reliance upon supposition of what Congress *really* wanted." *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 237 (2007). If Congress had been so eager to cover only latent injuries resulting from work on the OCS as well as those occurring there, it would have used language that conveyed that meaning to an ordinary reader.[24]

Petitioners' attempt to invoke § 4's structure fares no better. Incorporating a lengthy passage from the Fifth Circuit's decision in *Mills*, petitioners contend that § 4's structure favors their situs-of-injury argument because the specific geographical limitations contained in all parts of § 4, except for § 4(b), "'demonstrate that Congress intended to regulate the OCS, not those areas that already were governed by state law,'" and because there is no "'legislative history suggesting that Congress intended to single out OCSLA's workers' compensation scheme for different treatment.'" Pet. Br. 24 (quoting 877 F.2d at 359). The *textual* differences between the various provisions of § 4 – rather than anything in the legislative history – support a compelling inference of legislative intent to treat workers' compensation differently from the other federal laws extended to the OCS. *See supra* pp. 25-27. "[I]t would be a strange canon of statutory construction that would require Congress to state in committee reports or elsewhere in its deliberations that which is obvious on the face of a

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[24] For example, Congress easily could have written § 4(b) to cover injuries "occurring on the OCS and latent injuries or occupational diseases resulting from occurrences or working conditions on the OCS regardless of where they become manifest," had it been concerned about the possibility that latent injuries would not be covered.

statute." *Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 592 (1980).

B. Section 4(b) Was Not Enacted Simply To Fill Gaps In The Law

Petitioners follow the Fifth Circuit's lead in *Mills* by arguing (at 17-23) that Congress's purpose in adopting § 4(b) was to fill a void in applicable law on the OCS that adjacent states' laws did not reach. From that premise, they argue that OCSLA should not be construed to apply on land, where no void ever would have existed. That contention is unpersuasive. OCSLA's text is "sufficiently clear in its context" that there is no need "to examine the additional considerations of policy that may have influenced the lawmakers in their formulation of the statute." *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (per curiam) (internal quotation marks and alteration omitted). Nevertheless, even taken on their own terms, petitioners' arguments fail to show that Congress's purposes in passing the statute require this Court to read a situs-of-injury requirement into § 4(b).

1. Petitioners make no persuasive showing that a void in workers' compensation coverage even existed before OCSLA. They weakly distinguish the California, Louisiana, and Texas cases cited by the court below to show the absence of any such void,[25]

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[25] Petitioners object (at 19) that the cases cited in the opinion below to demonstrate the extraterritorial application of state workers' compensation statutes all involved injuries suffered in another state. But that is an irrelevant distinction. If anything, a state would be more likely to apply a statute extraterritorially to a location in which no competing sovereignty exists (such as the pre-1953 OCS) than to a location in another state. In any event, states do apply their workers'

but their principal contention (at 19-20) is that a void *might* have existed with respect to some other (unidentified) state. That speculation is unfounded. This Court already has recognized that, "[w]hen extractive operations first moved offshore, all claims for injuries on fixed platforms proceeded under state workers' compensation schemes." *Herb's Welding*, 470 U.S. at 419. By 1953, no coastal state still limited its workers' compensation law to in-state injuries.[26]

In addition, the Senate's discussion and rejection of an amendment that would have made LHWCA applicable only "if recovery for such disability or death through workmen's compensation proceedings is not provided by State law," S. Rep. No. 83-411, at 16 (1953), further shows that OCSLA was not intended purely as a gap-filling measure. If gap-filling had been Congress's goal, passing that amendment would have been logical. The committee

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compensation statutes to OCS injuries. *See, e.g., Bobbitt v. Workers' Comp. Appeals Bd.*, 143 Cal. App. 3d 845 (1983); *Thompson v. Teledyne Movible Offshore, Inc.*, 419 So. 2d 822 (La. 1982).

[26] At one time, three coastal states (and four inland states) followed a since-abandoned "tort theory" whereby workers' compensation laws were limited to in-state injuries. *See* 71 C.J. *Workmen's Compensation Acts* § 46, at 304 & n.50 (1935) (listing California and Massachusetts as adherents to the "tort theory"); LARSON § 143.02 n.3 (adding Delaware). Tort theory vanished almost entirely by the 1940s, as legislatures by statute overturned court decisions implementing it. It was statutorily overturned or expanded to cover out-of-state injuries in California in 1917, in Massachusetts in 1927, and in Delaware by 1939. *See id.* When Congress enacted OCSLA in 1953, only Oklahoma still followed the tort theory. It became the last state to abandon the discredited doctrine (and thus the in-state situs requirement) in 1955. *See id.*

instead found it "inadvisable to have [LHWCA] apply only if there is no applicable State law." *Id.* at 23. The amendment's rejection demonstrates that Congress was not focused on gap-filling and contemplated (even endorsed) an overlap between state and federal coverage. *See id.*

Indeed, when they address the Senate's rejection of that amendment, petitioners concede (at 20-21) that Congress was not so concerned with gap-filling after all. Congress instead intended to "provid[e] [OCS] workers with a uniform compensation scheme" without regard for "the applicability and vagaries of the adjacent state's workers' compensation scheme." Pet. Br. 20. Petitioners' standard, however, would not serve that purpose: instead, it would subject OCS workers to "the applicability and vagaries of the adjacent state's workers' compensation scheme" if they are injured when their OCS work happens to bring them ashore or *anywhere* off the platform, as such work inherently must do.

2. Further, when it passed OCSLA in 1953, Congress's purpose was fully consistent with extending coverage to workers in Valladolid's position. That purpose was to capture the mineral resources of the OCS for the Nation's benefit. OCSLA § 3 declares as the policy of the United States that:

> (1) the subsoil and seabed of the [OCS] appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this [Act]; . . . [and]
>
> (3) the [OCS] is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is

> consistent with the maintenance of competition and other national needs[.]

43 U.S.C. § 1332(1), (3).

Similarly, the House Report on H.R. 5134, 83d Cong. (1953), declared that "operation[s] [on the OCS] are vital to our national economy and security" and cited the lack of positive law enabling economic development of the OCS as making it "the duty of the Congress to enact promptly a leasing policy for the purpose of encouraging the discovery and development of the oil potential of the Continental Shelf." H.R. Rep. No. 83-413, at 2-3, 1953 U.S.C.C.A.N. 2178. The bill's avowed goal was "that the area in the [OCS] may be leased and developed by the Federal Government." *Id.* at 2. The Senate committee also urged that "'the full development[] of the estimated values in the [OCS] area will require the efforts and the physical presence of thousands of workers on fixed structures in the shelf area. Industrial accidents, accidental death, peace and order – these and many other problems and situations need and must have legislative attention." S. Rep. No. 83-411, at 4 (quoting S. Rep. No. 83-133, at 9 (1953)).

Congress's intent to extend federal workers' compensation benefits as a means of promoting economic development and industrial peace did not compel it to adopt any particular stopping point for the extension of those benefits, and certainly does not by itself furnish a workable test. Nevertheless, that purpose *does* at least suggest that Congress would not have found someone like Valladolid – whose employment focused on OCS-based operations and unquestionably contributed to the overall project of developing the OCS – beyond its concern. Accordingly, congressional purpose provides no reason to read a situs-of-

injury requirement into text that does not contain one.

C. Other Policy Considerations Do Not Favor A § 4(b) Situs-Of-Injury Requirement

Petitioners also argue that policy considerations favor a situs-of-injury requirement, and they tout (at 32) the benefits of a "bright-line situs-of-injury test." Even if that contention were properly addressed to this Court rather than to Congress, those supposed "benefits" are illusory. Petitioners' approach presents a substantial line-drawing problem; exacerbates any double-insurance concerns that might exist; and is inconsistent with the historical development of state workers' compensation laws, which have rejected situs-of-injury requirements.

1. The history of *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), and the resulting LHWCA situs requirement provide strong evidence of the inadvisability of grafting a situs-of-injury requirement onto § 4(b). LHWCA is the last remaining workers' compensation statute with a situs-of-injury requirement, *see* LHWCA § 3(a), 33 U.S.C. § 903(a), which Congress created in specific response to *Jensen*. The resulting difficulties were notorious.

To define coverage, the original LHWCA adopted what became known as the "*Jensen* line": the statute governed only injuries "occurring upon the navigable waters of the United States." LHWCA § 3(a), 44 Stat. 1426. Although that line was at least as "bright" as any that petitioners advocate here, "[t]his Court [was] unable to give any guiding, definite rule . . . in advance of litigation . . . . The determination of particular cases, of which there [were] a great many, [was] extremely difficult." *Davis v. Department of Labor & Indus.*, 317 U.S. 249, 253 (1942).

Employees were "asked to determine with certainty before bringing their actions [a] factual question over which courts regularly divide among themselves and within their own membership." *Id.* at 254. The "result defeat[ed] the purpose of the federal act." *Id.* Moreover, "[t]he horns of the jurisdictional dilemma press[ed] as sharply on employers as on employees," *id.* at 255, because they were unable to predict what insurance was required.

The problems began soon after *Jensen* was decided, as this Court almost immediately created the "maritime but local" doctrine to mitigate some of *Jensen*'s problems. *See Western Fuel Co. v. Garcia*, 257 U.S. 233, 242 (1921) (permitting state law to apply when the "subject is maritime and local in character"); *see also, e.g., Millers' Indem. Underwriters v. Braud*, 270 U.S. 59, 64-65 (1926) (state law applies because "the matter is of mere local concern"); *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469, 476-77 (1922) (following *Western Fuel*). That doctrine became a major part of the problem in applying the LHWCA situs requirement. *See, e.g., Calbeck v. Travelers Ins. Co.*, 370 U.S. 114, 128-29 (1962); *Davis*, 317 U.S. at 253-54.

This Court's frequent intervention was required even for cases not involving the "maritime but local" doctrine. In *T. Smith & Son, Inc. v. Taylor*, 276 U.S. 179 (1928), for example, a longshoreman was knocked from a wharf into the water, where he died. This Court held that state workers' compensation applied on the theory that the "sole, immediate and proximate cause of his death" occurred on the wharf, an extension of the land. *Id.* at 182. In *Minnie v. Port Huron Terminal Co.*, 295 U.S. 647 (1935), by contrast, a longshoreman was swept from the deck of

a vessel, landing on a wharf where he was injured. This Court held that he was not entitled to state workers' compensation because the cause of the injury occurred when he was on the vessel. *Id.* at 649. *See also, e.g.*, Arthur Larson, *The Conflict of Laws Problem Between the Longshoremen's Act and State Workmen's Compensation Acts*, 45 S. CAL. L. REV. 699, 737 (1972) (noting the "troublesome borderline cases" that arose under the situs-of-injury test, despite its being "seemingly so physically self-evident").

Even when the application of the situs requirement was fairly clear, it created tremendous difficulties in practice because workers regularly moved between state and federal coverage every time they moved between a pier and a docked ship. *See, e.g., Chesapeake & Ohio Ry. Co. v. Schwalb*, 493 U.S. 40, 49 (1989) (Blackmun, J., concurring) (noting "the problem that under the pre-1972 Act employees would walk in and out of LHWCA coverage during their workday") (citing *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 273 (1977)).

The confusion and uncertainty were so bad that Congress ultimately had to amend the situs requirement in 1972. *See supra* p. 7. Despite the improvement, this Court still confronted cases seeking to clarify the new situs requirement. *See, e.g., Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715 (1980); *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69 (1979); *Northeast Marine Terminal, supra.* Even today, LHWCA provides what one prominent defense lawyer recently described as "a playpen of litigation possibilities that can only delight the appellate bar." Thomas C. Fitzhugh III, *Who Is Covered? Recent Cases Regarding Longshore Situs and Status*, 16 U.S.F. MAR. L.J. 265, 318 (2003-2004).

In advocating a "bright-line situs-of-injury test," Pet. Br. 33, petitioners invite this Court to create another "jurisdictional monstrosity," *Sun Ship*, 447 U.S. at 720, comparable to that which has bedeviled the courts under LHWCA's situs requirement. The LHWCA experience showed that such lines are difficult to apply in practice and that they create uncertainty and confusion. Petitioners' ill-defined situs-of-injury test would be even more difficult to apply, and thus would create even greater uncertainty and confusion. Even if the situs were eventually well-defined, petitioners' proposal would result in OCS workers' moving between state and federal coverage every time they move on or off a covered situs. Congress was wise enough to avoid the mistake when it enacted OCSLA. This Court similarly should decline to impose a situs-of-injury requirement under § 4(b).

2. Petitioners also wrongly argue (at 33-34) that a "bright-line situs-of-injury test" would clarify insurance decisions and limit the need for employers to obtain double insurance coverage. That concern is unjustified. If duplicative insurance were any concern at all, petitioners' test would exacerbate the problem and create distinctive problems for OCS employers that do not exist with a status test.

First, petitioners' argument about duplicative insurance is misplaced. The nature of OCS development and its relationship to economic activities on land mean that employers are responsible for obtaining insurance that covers both state workers' compensation and LHWCA/OCSLA compensation liabilities. As a practical matter, workers injured on an OCS platform generally claim LHWCA compensation under OCSLA, but, because state coverage extends to

the OCS (*see supra* p. 40 & n.25), employers must insure against that risk. This is no problem in practice because single policies covering all workers' compensation obligations – state and federal – are readily available.[27]

Second, if duplicative insurance were a serious concern, it would provide another reason to reject petitioners' arguments because the need for double coverage would be greater under a situs-of-injury test. Coverage under a status test is clear for most employees. For those workers such as Valladolid, who worked almost exclusively on the OCS, employers like Pacific would recognize that as a practical matter virtually all claims would be filed under the federal system. A situs-of-injury test, by contrast, would always require employers to obtain both state

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[27] Concurrent coverage has been necessary at least since the *Davis* Court's recognition of a twilight zone in which workers on navigable waters may claim either LHWCA benefits or state workers' compensation benefits. *See supra* p. 6. The need simply became more obvious with *Calbeck*, 370 U.S. at 126-27, and *Sun Ship*, 447 U.S. at 719-26. *See supra* pp. 6-7. Accordingly, dual coverage has been available for many years to employers whose workers might claim under either state workers' compensation or LHWCA. *See, e.g.*, LESLIE J. BUGLASS, MARINE INSURANCE AND GENERAL AVERAGE IN THE UNITED STATES 419-20 (3d ed. 1991) (explaining how employers take out standard state workers' compensation policies and add endorsements for LHWCA coverage); Larson, 45 S. CAL. L. REV. at 736-37 & n.121 (noting that it is simple and inexpensive to add a "Longshoremen's Endorsement" to a state workers' compensation policy); *see also* 20 C.F.R. §§ 703.109, 704.351 (regulations providing forms for employers to add insurance endorsements for LHWCA and OCSLA coverage to standard state workers' compensation policies). Indeed, LHWCA § 32(a)(1), 33 U.S.C. § 932(a)(1), and 20 C.F.R. § 703.101 require that an insurance company must be authorized to write coverage under a state workers' compensation law to be authorized to sell LHWCA insurance.

and federal coverage for all OCS workers because all employees, even those who spend 98% of their time on platforms, are on land or in transit over state waters for at least part of their working time. Employers can never know for certain where workers' injuries will occur, and thus they would need to insure against the real possibility that workers will seek compensation under either system.

Third, petitioners would create a unique double-insurance problem that arises only under a situs-of-injury test. Their approach exposes employers to liability in tort when the location of the injury is outside both their preferred OCSLA situs (however they define it) and state workers' compensation jurisdiction. That consequence flows from one of the tradeoffs of workers' compensation – that workers forgo tort recoveries in return for workers' compensation coverage. *See, e.g.*, LHWCA § 5(a), 33 U.S.C. § 905(a). That bargain does not apply for injuries not covered by a workers' compensation regime.

Under petitioners' approach, OCS workers lose OCSLA protection when they are injured off the OCS. OCS workers injured on the high seas, therefore, might well have no workers' compensation coverage whatsoever (the very problem that Congress sought to avoid when enacting OCSLA). Although petitioners have not defined their proposed situs for § 4(b) (*see supra* p. 29), the high seas fall outside the situs defined in other subsections of § 4 (*see supra* p. 30; *Tallentire*, 477 U.S. at 219-20). Under *Jensen*, 244 U.S. at 217-18, state workers' compensation coverage is questionable for injuries on the high seas. And *Herb's Welding*, 470 U.S. at 425, held that a platform welder was not engaged in maritime employment as required for direct LHWCA coverage.

Without workers' compensation coverage, the workers' only recourse would be tort actions[28] seeking full recovery for their injuries – and without workers' compensation coverage employers would be exposed to those suits. The exposure to that risk would require employers to obtain liability insurance coverage. That double-insurance problem – which is very real given the dangers and hazards of the work involved – would not apply if all OCS workers are covered by LHWCA under OCSLA § 4(b) when they are injured "as the result of" OCS operations.

3. General experience in the field of workers' compensation also weighs against a situs-of-injury requirement. The states uniformly have rejected such requirements. In the early 20th century, judicial interpretation in seven states created in-state situs-of-injury requirements under state workers' compensation statutes. *See supra* p. 41 & n.26. Every state that once had such a requirement, however, has since rejected it, *see id.*, generally when the state legislature recognized that the better policy is to tie workers' compensation coverage to legitimate state governmental interests in the injury *or* the employment relationship rather than the location of the injury alone. No state in more than 50 years has limited the scope of its workers' compensation legislation to injuries that occur within that state. *See id.*

In the federal system, Congress imposed a situs-of-injury requirement only under LHWCA – a *sui generis* decision that can be explained only by the unique history surrounding this Court's decision in *Jensen*. *See supra* pp. 4-5. In every subsequent workers'

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[28] Depending on the circumstances, the tort action could arise under state law, general maritime law, or (for fatal injuries) DOHSA.

compensation statute,[29] including those incorporating LHWCA by reference, Congress tied coverage to employment status with no situs-of-injury requirement, even if employment status may have had a situs element. When Congress adopted LHWCA as the local workers' compensation statute for the District of Columbia, for example, employment status required a connection with the District (which could be described as a "situs"), but workers covered by that law received compensation for work-related injuries regardless of where they occurred. *See, e.g., Cardillo v. Liberty Mut. Ins. Co.*, 330 U.S. 469, 474-77 (1947); *Greenfield v. Volpe Constr. Co.*, 849 F.2d 635, 637-38 (D.C. Cir. 1988) (per curiam); *see also* Defense Base Act, 42 U.S.C. § 1651(a).

Under the analogous non-statutory schemes that federal courts apply in maritime law, this Court also has rejected any situs-of-injury requirement. Seamen are not covered by workers' compensation, but "maintenance and cure" is an ancient doctrine that compensates injured seamen on a no-fault basis, much as do workers' compensation statutes. This Court long has recognized that a seaman injured in the service of the ship is entitled to maintenance and cure regardless of where the injury occurred. *See, e.g., Aguilar v. Standard Oil Co. of New Jersey*, 318 U.S. 724, 732 (1943) ("When the seaman's duties carry him ashore, the shipowner's obligation is neither terminated nor narrowed."); *Warren v. United*

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[29] *See supra* pp. 9-10 (discussing other statutes incorporating LHWCA); *see also, e.g.*, Federal Employees' Compensation Act, 5 U.S.C. § 8101 *et seq.* (general workers' compensation statute for federal civilian employees, which does not contain a situs-of-injury requirement).

States, 340 U.S. 523, 530 (1951) (permitting recovery for injuries suffered ashore).[30]

The entire theory of workers' compensation statutes is that employees are covered for accidental injuries "arising out of and in the course of employment." LARSON § 1.01 (internal quotation marks omitted). Congress and the states thus have recognized that coverage should be tied to employment status. So long as a covered employee is injured "in the course of employment," other factors generally should be irrelevant. Petitioners seek to reinstitute a minority approach from the early 20th century that has been almost universally rejected. *See generally id.* § 143.02[6] (explaining that "place of injury" should only be the "residual" test for compensation when claimant "is caught in the cross-fire of inconsistent state rules").

III. THE CORRECT TEST UNDER § 4(b) IS A STATUS-BASED INQUIRY

OCSLA's plain language makes clear that § 4(b) does not limit compensation to injuries that occur on the OCS. *See supra* Part I. Properly construed, OCSLA § 4(b) covers OCS workers whose status causes them to be engaged in "operations conducted on the [OCS] for the purpose of exploring for, developing, removing, or transporting by pipeline the

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[30] The Jones Act, 46 U.S.C. § 30104, provides injured seamen a negligence remedy against their employers that Congress chose to preserve when it excluded seamen from LHWCA. *See* LHWCA § 2(3)(G), 33 U.S.C. § 902(3)(G). The theory is that seamen did not need to be covered by LHWCA because the Jones Act served many of the same goals. Again, this Court long has held that the Jones Act applies to injuries suffered on land if they were suffered "in the course of" the seaman's employment. *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 41-42 (1943).

natural resources, or involving rights to the natural resources, of the subsoil and seabed of the [OCS]," and whose death or injury is the "result" of those operations. That interpretation is consistent with the language and the purpose of § 4(b), and sound policy.

OCLSA § 4(b), like LHWCA, is a workers' compensation scheme. Unlike tort law, which is most concerned with fault and negligence, workers' compensation law focuses on the employment relationship. *See* LARSON §§ 1.01, 1.03[1] ("[T]he test is not the relation of an individual's personal quality (fault) to an event, but the relationship of an event to an employment."). OCSLA § 4(b) provides workers' compensation benefits to employees engaged in a specific type of employment in OCS operations. In most if not all cases, employment in operations conducted on the OCS (regardless of the location of the injury) should be both necessary and sufficient to prove that causal connection. For such a worker, the employment relationship *itself* results from the OCS-based operations for which the worker was hired. And any injury in the course of that employment thus also results from those operations. *Cf. Tallentire*, 477 U.S. at 219 (noting applicability of OCSLA when "the fatalities were *intimately connected* with the decedents' work on the platforms" even when the accidents did not occur on the platforms) (emphasis added).

When read in this way as a status-based workers' compensation provision that covers OCS workers for injuries that are causally connected to OCS operations, § 4(b) covers only injuries that are connected to OCS operations. Injuries remotely linked to OCS operations – for example, an injury to an on-shore human resources worker or an entirely land-based

welder – would not be covered. *See Brown*, 513 U.S. at 119 ("Assuming that the connection is limited to proximate causation so as to narrow the class of compensable cases, that narrowing occurs by eliminating remote consequences, not by requiring a demonstration of fault."). Thus, the problem asserted in *Mills* and quoted by petitioners – that one welder would be more generously compensated than another working next to him because the first welder happened to be working on equipment destined for an OCS platform, *see Mills*, 877 F.2d at 362 (*quoted at* Pet. Br. 34) – simply would not exist. A worker not generally involved in operations conducted on the OCS is not an OCS worker and therefore would not be covered under OCSLA § 4(b) simply because he happened to be working on equipment related to the OCS. Because Juan Valladolid's status clearly falls on the coverage side of that line, the Ninth Circuit was correct to remand the case for further proceedings.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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REPLY BRIEF

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Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP AND INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,
Petitioners,

v.

LUISA L. VALLADOLID, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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INTRODUCTION AND SUMMARY OF ARGUMENT

Section 1333(b), like the balance of the Outer Continental Shelf Lands Act ("OCSLA"), focuses on extending federal laws to the outer continental shelf and ensuring that the shelf did not remain a jurisdictional "no-man's-land." It does not extend a remedy to a worker injured in a forklift mishap on dry land in Ventura, California. That injury was caused by operations on dry land, not by "operations conducted on the outer Continental Shelf," as section 1333(b) requires. No amount of legal alchemy can convert dry land in Ventura, California—where both the injury and the operations that caused the injury clearly occurred—into the outer continental shelf.

For most of their briefs, up until the critical moment at which they urge a status-based test with absolutely no mooring in the statute, Respondents stress that the text of section 1333(b) does not unambiguously impose a situs requirement. To be sure, section 1333(b) would more clearly impose a situs requirement if it simply provided coverage to any employee for any injury occurring on the outer continental shelf. But that simple situs requirement would create anomalies that Congress could not have intended, such as providing longshore workers' benefits to accountants injured on the shelf. For this reason, section 1333(b) includes additional language that makes clear that a longshore workers' remedy is available only for an "injury occurring as the result of operations conducted on the outer Continental Shelf for the purposes of," *inter alia*, "exploring for, developing, removing, or transporting by pipeline the natural resources." Thus, courts, including this one,

have referred to section 1333(b) as "superimposing" a status-based requirement (employees injured by offshore production operations) on the basic situs requirement of OCSLA.

As even Respondents sometimes admit, section 1333(b) surely imposes some kind of situs requirement. It is best read as requiring the situs of injury to be the shelf with an additional status-based requirement superimposed. But at a minimum, it requires the situs of the operations that caused the injury to be on the outer continental shelf. And once it is conceded that either the situs of the injury or the situs of the operations must be on the shelf, there is no way Respondent Valladolid can recover for the forklift mishap on dry land. The decedent was self-evidently injured by operations on dry land, not by operations on the shelf. Only the most expansive view of but-for causation could possibly suggest that the decedent was injured "as the result of operations conducted on the outer Continental Shelf." Even the Director rejects such a reading because it would produce anomalous and wholly unintended results, such as extending OCSLA to the New Jersey Turnpike.

Lacking any means to suggest the text of section 1333(b) could reach an injury caused by operations on dry land, Respondents abandon the statutory text altogether and advocate a status-based test that looks to where a worker spends the majority of his or her time. Unable to point to any mooring in section 1333(b) for this purely status-based approach, the Director invokes this Court's decision in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995), which interpreted the Jones Act. But the need to invoke *Chandris* only

underscores the problem with Respondents' argument. While the Jones Act has language that supports a status-based test, there is no analogous language in section 1333(b). In sum, there are only two plausible interpretations of section 1333(b)—a situs-of-injury test with a superimposed status requirement or a situs-of-the-operations-that-caused-the-injury test—and either interpretation produces the entirely unsurprising conclusion that OCSLA does not provide new federal remedies for injuries occurring on dry land and caused by operations on dry land.

ARGUMENT

I. The Text and Structure of OCSLA Support Reading Section 1333(b) as Imposing a Situs-of-Injury Requirement.

Nothing in Respondents' briefs disproves Petitioners' basic contention that section 1333(b) is best read as limiting OCSLA's extension of coverage under the Longshore and Harbor Workers' Compensation Act ("LHWCA") to injuries that occur on the outer continental shelf. Respondents' plain text argument ultimately amounts to a contention that the statute cannot be read to impose a situs-of-injury requirement because Congress could have more clearly imposed a situs requirement by simply providing a remedy to any employee injured on the shelf. But both the addition of the phrase "as the result of operations conducted" and the later references to the purposes of those operations were necessary to limit longshore workers' coverage to employees directly involved in offshore production activities. Congress did not intend to extend

longshore workers' coverage to accountants. Moreover, Respondents' arguments overlook the text, structure and context of OCSLA.

1. At the outset, Respondents' plain text argument ignores the fact that Congress uses very different text when it wants to provide a remedy to workers based primarily on status or without regard to the situs of the injury. When Congress intends to extend benefits to workers without regard to where their injuries occur, Congress says so explicitly. *See, e.g.*, District of Columbia Workmen's Compensation Act, ch. 612, § 1, 45 Stat. 600 (1928) (repealed 1979) (extending LHWCA to employees in District of Columbia "*irrespective of the place where the injury or death occurs*" (emphasis added)); 42 U.S.C. § 1651 (extending workers' compensation to designated employees on overseas military bases "*irrespective of the place where the injury or death occurs*" (emphasis added)). Congress is equally explicit when it intends benefits to be determined solely by reference to a worker's status. *See, e.g.*, 5 U.S.C. § 8171(a) (extending LHWCA benefits to all work-related injuries "occurring to an employee of a nonappropriated fund instrumentality"); 46 U.S.C. § 30104 (affording cause of action to "[a] seaman injured in the course of employment"). Congress followed neither of those established approaches in section 1333(b).

Instead, Congress employed a formulation that provides a longshore workers' remedy to employees injured "as the result of operations conducted on the outer Continental Shelf" for specified purposes related to natural resource exploration and development. 43 U.S.C. § 1333(b). Not one word in

the statute even hints that it provides a remedy to workers who predominantly work offshore "irrespective of where the death or injury occurs." To be sure, Congress could have more clearly imposed a pure situs requirement if it provided a remedy to any employee injured on the outer continental shelf, and omitted the reference to injuries "as the result of operations conducted" and the related references to purposes. But omitting that language would have come at the cost of extending a longshore workers' remedy to employees injured on the shelf while performing functions for which a longshore workers' remedy would be wholly inapposite. Congress clearly did not intend that result, and the resulting statute is best read as providing a remedy to employees (1) injured on the shelf, (2) while performing specific operations for specified purposes.

Indeed, that is precisely how this Court has read the statute. In *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986), this Court considered the general structure of OCSLA and concluded that the statute reflects "Congress['s] determin[ation] that the general scope of OCSLA's coverage ... would be determined principally by locale, not by the status of the individual injured or killed." *Id.* at 219. The Court also noted that section 1333(b) "*superimposes* a status requirement on the otherwise determinative OCSLA situs requirement." *Id.* at 220 n.2 (emphasis added). The Court's formulation is telling. It did not describe 1333(b) as adopting a wholly different approach from the rest of OCSLA. To the contrary, the Court recognized that 1333(b), like the balance of OCSLA, is focused on the unique jurisdictional

problem of the outer continental shelf. But unlike other provisions that focus solely on situs, section 1333(b) requires more. It requires situs-plus-status. In other words, it "superimposes" a status requirement—that of being an employee injured while performing offshore operations for certain specified purposes—on top of the general situs requirement.

2. The general structure of section 1333 as a whole only reinforces that reading. The first subsection of the statute extends federal law to "the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed." 43 U.S.C. § 1333(a)(1). That same geographical definition is referenced in the statute's various other provisions, denoting Congress's clear intent to extend the specified federal laws and regulations only to those designated areas. *See id.* § 1333(c)–(f) (each referencing the "artificial islands, installations, and other devices referred to in subsection (a)").*

Subsection (b) does not expressly cross-reference subsection (a), but that does not reflect any lesser focus on the unique problem of the shelf. Instead, it simply reflects the fact that subsection (b) includes its own reference to the "outer Continental Shelf," which many of the other subsections lack. It also

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* Respondents make much of the fact that section 1333(a)(2) sets forth a narrower situs than section 1333(a)(1). But section 1333(a)(2) establishes the extent to which Congress adopted state law as a surrogate for the federal law it extended to the shelf, not the extent to which Congress extended federal law in the first place.

reflects the provision's unique recodification history discussed below. And finally it reflects the fact that Congress's focus in subsection (b) was not just on situs, but on limiting the longshore workers' remedy to employees engaged in certain operations. What it does not reflect is any intent to provide a remedy to anyone on dry land or anywhere other than on the shelf, where the unique jurisdictional problems that the statute addresses are implicated.

The focus on providing a remedy for injuries suffered on the shelf is underscored by the final provision of section 1333. Section 1333(f) is a sort of savings clause, making clear that "[t]he specific application *by this section*" of specific provisions of law to the shelf "shall not give rise to any inference that the application ... of any other provision of law is not intended." 43 U.S.C. § 1333(f) (emphasis added). This subsection makes clear that "this section"—*i.e.*, section 1333—extends "certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon." *Id.* Subsection (b) is not carved out from the rest of "this section" as having a different purpose or effect. Rather, the statutory text itself makes clear that 1333(b), like the rest of section 1333, extends a "certain provision[] of law"—namely the LHWCA—to the "outer Continental Shelf." The differences in wording between (b) and the other provisions reflect not some fundamentally different approach or purpose, but the reality that Congress did not want to provide a longshore workers' remedy to every

employee and so "superimpose[d] a status requirement on the otherwise determinative OCSLA situs requirement." *Offshore Logistics*, 477 U.S. at 220 n.2.

3. The original form in which section 1333(b) was enacted reinforces the inference that Congress intended to extend LHWCA coverage only to the outer continental shelf as geographically defined throughout the statute. In its original form, OCSLA's LHWCA provision incorporated by express reference Congress's geographic limitation on the statute's extension of federal jurisdiction as a limitation on the extension of LHWCA coverage. Section 4 of OCSLA provided, in relevant part:

> (b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources ... of the subsoil and seabed of the outer Continental Shelf ....
>
> (c) With respect to disability or death of an employee resulting from any injury occurring *as the result of operations described in subsection (b)*, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

OCSLA § 4(b)–(c), 67 Stat. 462, 462–63 (1953) (emphasis added). That original structure makes clear that Congress was primarily concerned with the jurisdictional problem of the situs, and so extended federal jurisdiction to controversies arising

from the operations on the shelf set forth in subsection (b). It then provided a remedy to employees injured as the result of those same operations in that same situs. Thus, it was clear that the statute was not designed to provide a remedy for offshore workers wherever and whenever they are injured, but rather to adopt the situs-plus-status test that this Court accurately described in *Offshore Logistics*.

Nothing in the recodification of OCSLA changed that basic fact. When Congress reorganized those provisions of the statute in 1978, it made clear that "it was not [its] intent ... to alter in any way the existing [LHWCA] coverage." H.R. Rep. No. 95–1474, at 81 (1978) (Conf. Rep.), *reprinted in* 1978 U.S.C.C.A.N. 1674, 1680. Accordingly, as it did then, section 1333(b) now continues to contain both the same basic situs prerequisite as the rest of the statute—it covers only those injuries that occur on the outer continental shelf—and its own unique status requirement.

The original form of 1333(b) also underscores the broader problem with Respondents' view of the statute. Presumably even Respondents would concede that federal jurisdiction would not extend by virtue of the original subsection (b) to a dispute arising out of operations on dry land based on some tenuous connection to offshore operations. But there is no more reason to read the original section 4(c)—now 1333(b)—as extending to injuries suffered on dry land just because of a tenuous connection to offshore operations.

4. The basic text and structure of section 1333(b) and section 1333 as a whole render largely irrelevant the bulk of Respondents' objections to a situs-of-injury requirement. For example, Valladolid argues at length that neither the statute nor Petitioners "define[] the relevant situs" with sufficient specificity. Valladolid Br. 29. But Valladolid readily concedes (as she must) that "§ 4(b) undisputedly contains a 'situs requirement,'" Valladolid Br. 36, because, at a minimum, the operations which caused the injury must occur on the shelf, *see infra*, at 14. Respondents also make much of the fact that subsection (b) does not contain the exact same situs requirement as other provisions of section 1333. But, as explained, Respondents fail to give any weight to the plain text of 1333(f), which makes clear that *all* of section 1333's subsections extend federal law only "to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon." *Id.* § 1333(f).

There is likewise no merit to Valladolid's claims that attempting to define the relevant situs for purposes of a situs-of-injury test "would present significant difficulties," or that "OCSLA provides no guidance" on what the situs would be. Valladolid Br. 19, 29. The statute provides very clear guidance—courts should interpret section 1333(b)'s reference to "the outer Continental Shelf" consistently with the rest of section 1333, which defines "the outer Continental Shelf" to include only "the subsoil and seabed of the outer Continental Shelf and ... all artificial islands, and all installations and other

devices permanently or temporarily attached to the seabed." 43 U.S.C. § 1333(a)(1); *see also id.* § 1333(c)–(f) (invoking same definition). That is the clear import of section 1333(f) and its explanation that the various provisions of the statute extend federal law to the specific locations "referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon." *Id.* § 1333(f).

5. Finally, Petitioners' reading of 1333(b) is not only more consistent with the text and structure of the statute, but is also consistent with Congress's evident intent to address a jurisdictional "no-man's-land," rather than provide a duplicative remedy for injuries suffered on dry land.

Respondents cannot and do not dispute the basic factual background against which OCSLA was enacted. Before OCSLA, the shelf was "an area of intense activity that lacked an established legal system because it lies beyond state boundaries." *Mills v. Dir., Office of Workers' Comp. Programs, U.S. Dep't of Labor*, 877 F.2d 356, 358 (5th Cir. 1989). OCSLA was enacted for the very specific purpose of eliminating that jurisdictional confusion and establishing a set of "laws and regulations governing [outer Continental Shelf] lands." 43 U.S.C. § 1333. The basic structure of the statute reflects Congress's intent to address this unique and limited problem and limit OCSLA, and section 1333 in particular, to the "narrowly circumscribed area" of the outer continental shelf. *Offshore Logistics*, 477 U.S. at 218.

Although Valladolid makes the entirely unobjectionable and unexceptional point that

OCSLA was not *solely* enacted to cure that jurisdictional gap, *see* Valladolid Br. 43 (noting that OCSLA was intended to "promot[e] economic development" on the shelf), neither Valladolid nor the Director points to anything in the statute or its legislative history that suggests Congress was focused on areas beyond the shelf itself, or that its focus was based on workers' status as opposed to the unique jurisdictional issues posed by the geography of the shelf.

In light of Congress's obvious focus on those jurisdictional problems, Respondents provide no satisfying response to Petitioners' contention that a statute enacted with that kind of acutely geographic focus should not lightly be construed to extend beyond the "narrowly circumscribed area" in which it was intended to apply. *Offshore Logistics*, 477 U.S. at 218. *Cf. Small v. United States*, 544 U.S. 385, 388 (2005); *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991). The Director suggests (at 26 n.9) the concerns underlying the presumption against extraterritorial application of domestic statutes carry no weight in a case like this one, as they only "protect against unintended clashes between our laws and those of other nations." *EEOC*, 499 U.S. at 248. But the Director fails to explain why giving domestic effect to a federal statute that was plainly intended to govern areas outside the reach of state law would not raise highly analogous concerns as to unintended clashes or overlaps between federal and state law.

Respondents suggest Congress may have anticipated overlap between state and federal law when, during the drafting process, it deleted

language that would have precluded recovery under section 1333(b) for a worker already covered by state law. *See* Valladolid Br. 41; Dir. Br. 28. A committee report explaining that deletion, however, only drives home the point that Congress's goal was to provide coverage to "all workers *on the Outer Shelf*," S. Rep. No. 83-411, at 23 (1953) (emphasis added), not to extend coverage to the land-based injuries of individuals who work on the shelf.

Moreover, Congress's decision not to limit remedies of workers whose States extended a remedy pre-OCSLA at most shows that Congress's concern is better phrased as addressing jurisdictional confusion—rather than only a jurisdictional gap—concerning the status of the outer continental shelf. Congress was concerned that overlapping claims of jurisdiction and the confusing status of the shelf would leave some workers without remedies. It addressed the unique jurisdictional status of the shelf with a statute directed uniquely to the shelf. Subsection 1333(a) generally extends federal jurisdiction to the shelf, subsections (b)–(e) extend specific federal laws, and subsection (f) makes clear that nothing in the section precludes the application of other federal laws to the shelf. But nothing in the text, structure, or purpose of Congress suggests an intent to provide a remedy outside of the geographical situs of the shelf with its attendant jurisdictional issues. Thus, in light of the uniquely geographically tethered goal of OCSLA, courts should be wary of reading section 1333(b) to extend "far beyond its intended locale," *Offshore Logistics*, 477 U.S. at 218, to reach injuries occurring

not just on the shelf, but on the shore and the New Jersey Turnpike as well.

II. Section 1333(b) At the Very Least Requires an Injury to Be Proximately Caused by Operations on the Shelf.

1. Although section 1333(b) is best read as imposing a situs-plus-status test, even Respondents are forced to concede that section 1333(b) "undisputedly contains *a* 'situs requirement.'" Valladolid Br. 36 (emphasis added). The statute extends LHWCA coverage only to those "injur[ies] occurring as the result of operations conducted *on the outer Continental Shelf*," 43 U.S.C. § 1333(b) (emphasis added), and thus at a minimum mandates that "the operations from which the injury results must be 'conducted *on* the [Shelf].'" Dir. Br. 24. Accordingly, even if the statute does not require the *injury* to occur on the shelf, it at least requires *the operations that caused the injury* to occur on the shelf, and thus forecloses any reading of the statute that would cover an injury like the decedent's, which occurred on dry land and was caused by operations on dry land.

Valladolid dismisses the statute's clear situs-of-operations-that-caused-the-injury requirement as "trivial," Valladolid Br. 37, as she contends it is satisfied by the mere fact that an employee works on operations on the shelf, even if the employee is not actually injured by something that happens on the shelf. *See* Valladolid Br. 53 ("employment in operations conducted on the OCS (regardless of the location of the injury) should be both necessary and sufficient to prove th[e] causal connection"). The

Director similarly contends that "an off-Shelf injury to an employee who spends a substantial amount of his time on the Shelf furthering the employer's 'operations' there also 'result[s]' from Shelf operations." Dir. Br. 33.

Although Respondents claim to disavow a "but-for" test, *see infra*, at 17, there are only two ways to reach decedent's injury—either under an unprecedentedly broad concept of but-for causation or under a status-based test that asks only where a worker spends most of his time, an approach with no mooring in the statutory text. Respondents' radical but-for reading of section 1333(b)'s causation requirement (albeit by another name) is wholly untenable. Operations on the shelf caused the decedent's injury only in the most far-fetched sense that, but for operations on the shelf, decedent might not have a job or might not have been in Ventura on the fateful day. By that logic, the decedent was injured as the result of Petitioner's formation as an enterprise and as a result of the settlement of California.

As a matter of common sense, however, the phrase "as the result of operations conducted on the [Shelf]" is best understood to require a *direct* causal relationship between an injury and operations that actually occur *on the shelf*. That language cannot plausibly be read to signal Congress's implicit intent to provide LHWCA coverage whenever some attenuated chain of injury-producing events could ultimately be traced back to the mere fact that operations on the shelf exist. Especially in light of Congress's clear intent to address the unique problems caused by the jurisdictional confusion

concerning the shelf, the statute is much more logically read to impose a stringent proximate causation requirement that is not satisfied when an injury neither occurs on nor is directly caused by something that happens on the shelf.

Respondents' reading of the statute not only ignores Congress's evident purpose, but it also proceeds as if section 1333(b) stood alone and the relevant question were whether it is possible to string together a chain of causation that ultimately traces an injury on dry land to operations on the shelf. That reading makes nonsense of the statute. The sensical way to read the statute is to understand that section 1333(b) is part of broader statute aimed specifically at the outer continental shelf, and that the relevant question is: was the decedent's injury caused by operations on the shelf (in which case one might think OCSLA would supply a remedy) or caused by operations on dry land (in which case one would assume OCSLA was wholly irrelevant). The decedent's injury in Ventura was self-evidently caused by operations on dry land. That should be the end of the case.

The primary case Respondents rely upon in support of their implausible reading of the statute's causation requirement confirms that their argument is unprecedented. *See* Valladolid Br. 24 and Dir. Br. 18 (citing *Brown v. Gardner*, 513 U.S. 115 (1994)). *Brown* addressed whether a statute covering "an injury ... that occurs as the result of hospitalization" should be read to impose a requirement that a hospital be at fault for the injury. 513 U.S. at 116, 119 (internal quotation marks omitted). The Court rejected that argument, but did so because there is a

difference between fault and cause, not because the phrase "as the result of" was without consequence. Quite the contrary, the Court confirmed that that language should be read to impose a "proximate causation requirement" that "narrow[s] the class of compensable cases ... by eliminating remote consequences, not by requiring a demonstration of fault." *Id.* at 119. Under Respondents' reading, "as the result of" would not narrow the class at all, but would simply require someone to have been hospitalized at some point in his or her life.

2. Respondents ultimately recognize that a concept of but-for causation that extends the outer continental shelf to the New Jersey Turnpike is wholly implausible. The Director recognizes with some understatement that "it is unlikely that Congress intended to provide for such open-ended LHWCA coverage." Dir. Br. 39; *see also* Valladolid Br. 53–54 (conceding that section 1333(b) should not be read to cover employee "[i]njuries remotely linked to OCS operations"). As a result, Respondents are forced to impose an artificial limitation on their reading of the statute, so as to prevent the statute from reaching, for example, "an injury to an on-shore human resources worker." Valladolid Br. 53. The Director admits that the statute provides no indication "what category of off-Shelf injuries are covered." Dir. Br. 32. But rather than recognize that the category clues are missing in the statute because *no* "off-Shelf injuries are covered," Respondents ultimately settle on a test that conveniently reaches just far enough to cover this case: they argue that section 1333(b) should be read to cover only those off-shelf injuries suffered by

workers who, like the decedent, "spend a substantial amount of time working on the Shelf." Dir. Br. 32. As to all others, Respondents would retain the statute's situs requirement: those workers "would be covered only for injuries that actually occur on the OCS itself." Dir. Br. 32.

Respondents draw a distinction not found in the statute. Section 1333(b) does not say a word about how much time an employee generally spends working on the shelf. Nor does anything in the text suggest Congress intended to create two different classes of workers, some whose injuries would be covered no matter where they occur, and some whose injuries would only be covered when directly caused by operations on the shelf. The statute instead imposes a single test applicable to all offshore workers: an employee's injuries are covered if they "occur as the result of operations conducted on the outer Continental Shelf" for the specific purposes set forth. 43 U.S.C. § 1333(b). Basic principles of statutory construction preclude Respondents' attempts to give two different interpretations to that single statutory directive. *See Clark v. Martinez*, 543 U.S. 371, 386 (2005) (rejecting "the dangerous principle that judges can give the same statutory text different meanings in different cases").

What Respondents really seek to do is to impose a status-based approach—a test that looks to how a worker spends the majority of his time to determine whether he is an "offshore worker"—with absolutely no basis in the statute. It is no accident that in advancing this atextual argument, the Director is forced to look far afield to cases interpreting different statutes that feature the kind of purely

"status-based" language that 1333(b) lacks. In particular, the Director asks the Court to import law developed to determine whether an individual is a "seaman" for purposes of the Jones Act. *See* Dir. Br. 33 (citing *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995)). But the law the Director invokes was developed precisely because the Jones Act undisputedly provides the very status-based coverage test that the text of section 1333(b) does not—it provides a cause of action for "any seaman" injured "in the course of his employment." *Chandris*, 515 U.S. at 354, 368 (internal quotation marks omitted). Congress made a deliberate decision not to model section 1333(b) after the broad status-based Jones Act. It was not concerned with the plight of offshore workers, even when they were injured on dry land. Congress instead was concerned with the unique problems caused by the outer continental shelf and wanted to provide a remedy for workers injured in that jurisdictional no-man's-land.

3. Contrary to Respondents' suggestions, this Court's precedents provide no support for their strained reading of section 1333(b). Respondents attempt to explain this Court's statement in *Herb's Welding v. Gray* that section 1333(b) "draws a clear geographic boundary that will predictably result in workers moving in and out of coverage," 470 U.S. 414, 427 (1985), not as a prediction about workers in general, but as a statement applicable only to the particular worker at issue because he did not spend "a substantial amount of time working on the Shelf," Dir. Br. 32. *See* Dir. Br. 26; Valladolid Br. 34. That is wholly implausible.

Herb's Welding does not so much as hint that the Court even contemplated such a distinction. Moreover, even assuming the Court might (implicitly) have considered the possibility that section 1333(b) imposes a situs test only on those workers who "d[o] not have the sort of substantial connection to the OCS" that triggers "OCSLA coverage for off-Shelf injuries," the Court gave no indication that it would have considered the worker in *Herb's Welding* part of that class of second-tier offshore workers. Dir. Br. 26. Quite the contrary, the Court described the worker as one who spent "a *significant* portion of his work-time" on the shelf, but nonetheless would fall outside the statute when working off-shelf. 470 U.S. at 427 (emphasis added). Nor did the Court suggest that OCSLA's "explicit geographic limitation" would apply only to workers who spend an insufficient amount of time working on the shelf. *Id.* The Court instead suggested precisely the opposite when it noted that the statute "will *predictably* result in workers moving in and out of coverage." *Id.* (emphasis added). Accordingly, there is no merit to Respondents' contention that the Court was expressly recognizing a geographic limitation that it implicitly considered inapplicable to the majority of section 1333(b) cases.

Respondents' effort to convert *Offshore Logistics* into favorable precedent is equally unpersuasive. According to Respondents, when the Court recognized that section 1333(b) "superimposes a status requirement on the otherwise determinative OCSLA situs requirement," *Offshore Logistics*, 477 U.S. at 220 n.2, it was in fact only referring to the situs of "the relevant extractive operations."

Valladolid Br. 36. But *Offshore Logistics* was referring to OCSLA's general situs requirement, so it is implausible to think it was referring to language unique to section 1333(b). The unique language is what caused that subsection alone to superimpose a status requirement.

But even if the Court was referring to the situs of the operations that caused the injury, instead of the injury itself, its language clearly demonstrates that it understood OCSLA to address the special problems of the shelf. The claimant in *Offshore Logistics* urged reliance on two cases that had assumed (without deciding) that OCSLA applied to worker "accidents that resulted in deaths or injuries not on platforms, but on boats in the waters immediately adjacent to the platforms." *Id.* at 218. Unpersuaded, the Court noted that to the extent OCSLA might cover *any* injuries that do not occur on the shelf, the statute would at least require "proximity of the workers' accidents to the platforms" and injuries "intimately connected with the [employees'] work on the platforms." *Id.* at 218–19. Thus, the Court thoroughly discredited the notion that OCSLA might be read to cover injuries that neither occur on nor are directly caused by operations on the shelf—and did so in the context of employees who, much like the decedent here, undisputedly spent the majority of their time working on the shelf. At the very least, the statute therefore requires direct and proximate causation, a standard that is not satisfied here.

III. Respondents Provide No Persuasive Reason Why Section 1333(b) Should Be Read to Cover Land-Based Injuries.

For all the reasons set forth, the text, structure and purpose of the statute compel the conclusion that there are only two plausible interpretations of section 1333(b), both of which impose a situs-based test: LHWCA coverage depends upon either whether an injury occurred on the shelf to a qualifying employee (situs-of-injury-plus-status), or whether the operations that caused an injury occurred on the shelf (situs-of-operations-causing-injury). The practical difference between the two tests is likely to be quite small. While it may be theoretically possible for operations on the shelf to directly injure a worker not on the shelf, in most circumstances, the employee will be on the shelf and the injury and operations alike will be on the shelf. Under either interpretation, however, there is no possible basis for extending the statute to injuries caused by operations on dry land.

Valladolid claims (at 31–32) that any situs-based test would be unworkable, making much of some conflicting results that the Fifth Circuit has reached when applying *Mills*. *See also* Dir. Br. 31 n.10. But any confusion in the Fifth Circuit's precedents is a product of that court's extension of LHWCA coverage to reach injuries suffered on "the waters above the OCS." *Mills*, 877 F.2d at 362. As this Court explained in *Offshore Logistics*, "OCSLA must be 'construed in such a manner that the character of the waters above the outer Continental Shelf as high seas ... shall not be affected.'" 477 U.S. at 217 (quoting 43 U.S.C. § 1332(2)).

Valladolid also point to purported "confusion and uncertainty" in the law when the LHWCA imposed a situs requirement that injuries must occur on navigable waters. Valladolid Br. 46. However, the confusion Valladolid references stemmed not from uncertainty as to how to apply the LHWCA's clear line between navigable waters and land, but rather from application of the "maritime but local" doctrine, which extended *state*-law compensation schemes *beyond* navigable waters. *See Calbeck v. Travelers Ins. Co.*, 370 U.S. 114, 119 (1962). As to the LHWCA's clear situs-of-injury test, there was never any confusion over or difficulty applying the rule that "federal coverage stopped at the water's edge." *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 259 (1977). There is similarly nothing inherently difficult about applying section 1333(b) to require examination of whether an injury, or at least the operations that caused it, occurred on "the outer Continental Shelf."

Finally, there is nothing inherently problematic about the fact that giving effect to section 1333(b)'s clear situs requirement "would result in OCS workers moving between state and federal coverage every time they move on and off a covered situs." Valladolid Br. 47. That is precisely how this Court contemplated section 1333(b) would operate, *see Herb's Welding*, 470 U.S. at 427 (section 1333(b) "will predictably result in workers moving in and out of coverage"), and that is precisely how the LHWCA operated for years, without this Court seeing a need to read the situs-of-injury test out of that statute, *see Northeast Marine*, 432 U.S. at 259–60. While there may be policy reasons to expand section 1333(b) to

provide broader LHWCA coverage for workers who spend most of their time on the shelf, "[t]he invitation to [do so] must be addressed to Congress, not to this Court." *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 223–24 (1970).

CONCLUSION

The judgment of the Court of Appeals should be reversed. The final order of the Benefits Review Board denying Respondent's claim should be reinstated.

Respectfully submitted,

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